

To The Board of Land and Natural Resources or to whom it may concern:

My name is Bronson Azama, and I hail from the moku of Ko'olaupoko, where water diversion issues are all too familiar to us. I would like to implore the Board of Land and Natural Resources to put new conditions on Alexander & Baldwin and Mahi Pono's revocable permits that reduce the amount of water they are needlessly wasting. Require that Alexander & Baldwin and Mahi Pono line six of their reservoirs to reduce waste and ultimately keep more water in East Maui's streams.

Naturally flowing streams with abundant native stream life, livable communities with accessible water and traditional food cultivation, and diversified agriculture for local food production are all critical to a sustainable future for Maui and the rest of Hawai'i. There is enough water to support all of these systems, if East Maui's waters are taken care of and are not being wasted.

Alexander & Baldwin, East Maui Irrigation and Mahi Pono were granted temporary permits last year to divert 45 million gallons of water a day. By their own record, the diverters have removed 22.6-27.7 million gallons of water a day, yet can only account for about 7 million gallons of water a day for all of its use, including serving the County's drinking water needs, the Kula Agricultural Park, Central Maui diversified agriculture, firefighting and dust control needs.

That means more than 70% of the water that is diverted is being wasted.

It's being wasted while streams run dry—native ecosystems suffer, residents along streams go without water, and drought conditions and restrictions exist. Kānaka Maoli have a holistic worldview, when one aspect of our ecosystem suffers it all suffers. The same can be viewed in the other way, where if we mediate the damage, or better yet heal this suffering aspect, then our entire ecosystem flourishes.

Hawaiians have a term for wealth, its waiwai. Wai is the word for drinkable/fresh water, which includes our streams. When we have an abundance of freshwater, we see a rich land, rather than what is occurring in our dried up streambeds - wastelands.

No longer should massive amounts of East Maui's precious stream water be wasted. It is time we take our ancestral knowledge into account, and the values that instilled within it. The Board should implement conditions in Alexander & Baldwin and Mahi Pono's permits that require lining six of their reservoirs to reduce the amount of water wasted and keep more water in East Maui's streams.

Mahalo nui for taking the time to read this testimony,

Bronson Azama

ITEM D-8

BOARD OF LAND AND NATURAL RESOURCES  
NOVEMBER 13, 2020  
9:00 A.M.

[blnr.testimony@hawaii.gov](mailto:blnr.testimony@hawaii.gov)

TESTIMONY

Re: Agenda Item D-8, Holdover/Continuation 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

Members of the Board of Land and Natural Resources:

My name is Gladys C. Baisa and I am a life-long local resident of Upcountry Maui and the former Director of Water for Maui County.

I am in strong support of EMI's continued revocable water permits. These permits are essential to the County and broader Maui community.

The East Maui waters are the primary source of domestic and irrigation water for 36,000 residents and farmers in Upcountry Maui. This water system has enabled the naturally-arid central Maui isthmus to successfully support local agriculture operations for over 100 years. Moving forward, these waters are critical to deciding if these lands will be successfully repurposed into agriculture and sustained for the next 100 years.

I urge you to please allow EMI to continue with their revocable water permits.

Sincerely,

GLADYS C. BAISA

**From:** Boisvert-Jorgensen  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] 11/13/20 Item D-8: Stop the waste of East Maui's waters. Impose conditions to line reservoirs.  
**Date:** Tuesday, November 10, 2020 3:25:24 PM

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Dear Board of Land and Natural Resources,

It is almost the end of 2020 – another year, another insult to Hawaiian farmers and fishermen.

Will the oppressive and tyrannical days of The Big Five over the lives and livelihood of Hawaiians never end?

Why do East Maui farmers have to beg for water for their kalo and other crops?

Why do East Maui fishermen have to beg for water to run again in sacred ancient streams so they may provide food for their families?

Alexander & Baldwin's entire history is one of power, greed, exploitation, and privilege at the expense of independent farmers and fishermen and the environment. Mahi Pono is eagerly following their lead.

Their willful and selfish waste is not only an insult to the East Maui farmers and fishermen, but is environmentally criminal.

Please include conditions in the permits to stop the waste.

Respectfully,  
Denise Boisvert  
Waikiki

Donna J. Clayton  
255 Kaulani Dr.  
Pukalani, HI 96768  
[donnajclayton@hawaii.rr.com](mailto:donnajclayton@hawaii.rr.com)

November 9, 2020

Re: BLNR Agenda November 13, 2020 – Item 8 under Land Division: Please support passage of **Revocable Permits # S-7263, S-7264, S-7265 and S-7266** for Water Use to Alexander & Baldwin and East Maui Irrigation Company for the following reasons:

Water to support farming

There is a strong desire on Maui for sustainable agriculture. Classes to teach new farmers have started and there are now numerous farmers' markets. Covid 19 has increased this awareness that we need to have food for residents during emergencies. Mahi Pono has made good progress on planting their new farm land in actual food crops. We need to take the worry about water supply off the table as they struggle as all farmers do with weather and pests. Mahi Pono is also providing agricultural land to local farmers and with farmers working together, sustainable is much more likely.

Water for Upcountry residents

We have approximately 36,000 Upcountry resident and several new developments underway just in Pukalani that will add over 500 new homes. Many residents are on the water list that is slow to move forward. We are currently under a Stage 1 drought warning and not allowed to water or wash cars, etc. Upcountry needs the East Maui Water supply to be reliable for our residents and Upcountry farmers.

Water to support the infrastructure

The East Maui irrigation system is an amazing feat of engineering. It is an important part of Maui's history and should be maintained and utilized. It would be a huge loss to let it fall into disrepair and with climate change and future water uncertainty we may need to use the system even more in the future. It would be impossible to repair and restore it in today's costs if it is not maintained.

Mahalo for considering this testimony.

Donna Clayton

## Division of Aquatic Resources East Maui Water Permit submittal comments

The Division of Aquatic Resources (DAR) has summarized information and conducted an evaluation of 12 East Maui Streams within the Huelo complex. Information was also provided for Puakea stream, however since this stream occurs within the Nahiku complex, it was excluded from the Huelo complex stream evaluation. With these comments DAR attempts to prioritize streams based on biological recovery potential, or in other words, which stream's restoration of flow would have the greatest benefit to aquatic resources. For this evaluation indigenous aquatic species and their habitat is of great importance. These include stream species such as oopu alamoo (*lentipes concolor*), oopu nopili (*Sicyopterus stimpsoni*), oopu nakea (*Awaous guamensis*), oopu naniha (*Stenogobius hawaiiensis*), opae kalaole (*Atyoida bisulcate*), opae oehaa (*Macrobrachium grandimanus*), hihiwai (*Neritina granosa*), and endangered damselflies (*Megalagrion spp.*). Although this is an evaluation of streams, the status of an estuary is directly tied to the status of the stream that feeds it. Therefore, estuary species such as aholehole (*Kuhlia xenura*), amaama (*Mugil cephalus*), moi (*Polydactylus sexfilis*), and others are also considered of great importance. To a lesser extent prawns (*Macrobrachium lar*) are considered. Although introduced, this species serves as an important food resource, consumed by many rural communities and adds to our State's food security.

Relative to other stream systems within the region of East Maui, little is known about the 12 Huelo complex systems, therefore the best available information was used for this evaluation. Additional studies are needed to better understand these systems and re-evaluate accordingly. To evaluate these systems, we considered information from three data sources: potential habitat units, geospatial assessment of available estuary habitat types, and input from DAR's Maui Stream Biologist.

Potential habitat units relate to the amount of habitat available within a stream during natural flow conditions. This data is derived from the East Maui Habitat Evaluation Study prepared by Parham (2019). A summary table of this information was provided by CWRM to DAR.

The geospatial assessment of available estuary habitat types was conducted by DAR staff. This analysis attempted to identify the presence of estuary bays (a setting where marine water is being intruded by freshwater, usually outside the stream mouth), and riverine estuaries (a setting where a stream is being intruded by marine water, usually landward of the stream mouth). Estuary bays was primarily determined by the two-dimensional shape of the coastline and the presences of a freshwater source. Riverine estuaries were primarily determined by the underlying slope of the stream near the coastline. From an estuary perspective, systems with multiple estuary types are valued higher.

Input from DAR's Maui Stream Biologist came from Skippy Hau. With the onset of expressed interest on these streams he initiated spot checks to quickly assess the aquatic resources. Although he was able to visit only six streams, the information provided was invaluable to this

effort. Additionally, based on Skippy's knowledge and experience, recommendations on streams recommended for prioritization of natural flow restoration was provided.

Although the presence of a terminal waterfall and geographic distribution were also considered, they were not weighed as heavily as other factors described above given that terminal waterfall may have a variety of influences on the distribution of native and non-native aquatic organisms. More studies related to terminal waterfalls would help to better understand the influence of these features on aquatic resources. The Huelo complex is predominantly represented by coastal terminal waterfalls, which is reflected in DAR's recommendation. Prioritization based on geographic distribution was also considered to ensure that high priority streams have a broad distribution across the east Maui coastline to promote estuarine productivity, and habitat and population connectivity.

The following summarizes the best available information on the 12 East Maui Streams of the Huelo complex in addition to Puakea stream of the Nahiku complex and prioritized (Huelo complex only) based on restoration potential and overall contribution to the ecosystem.

### **Kolea**

#### **Restoration Priority: Medium**

Kolea stream has the potential for 5,940 habitat units, which is in the mid-range relative to other streams in this evaluation. It abruptly enters marine waters on the open coast with a terminal waterfall. The estuarine area at this site is likely to be minimal. A recent stream check in October 2020 revealed an occurrence of prawns and important local food source. Due to a mid-potential for habitat units, a relatively small estuary, confirmed presence of a resources species, and lack of knowledge on this system, Kolea stream is of medium priority (6<sup>th</sup>) relative to other streams in this evaluation.

### **Punaluu (Puaaluu)**

#### **Restoration Priority: Low**

Punaluu or Puaaluu stream has the potential for zero habitat units, which is the lowest relative to other streams in this evaluation. It abruptly enters marine waters on the open coast with a terminal waterfall. The estuarine area at this site is likely to be minimal. This stream has not been visited by DAR recently. Due to a low potential for habitat units, a relatively small estuary, and lack of knowledge on this system, Punaluu stream is of low-priority (11<sup>th</sup>) relative to other streams in this evaluation.

### **Kaiea (Kaaiea)**

#### **Restoration Priority: Medium**

Kaiea or Kaaiea stream has the potential for 28,013 habitat units, which is in the upper range relative to other streams in this evaluation. It abruptly enters marine waters on the open coast with a terminal waterfall. The estuarine area at this site is likely to be minimal. A recent stream check in October 2020 revealed an occurrence of prawns and guppies (*Poecilia reticulata*).

Although Kaiea is in the upper tier for habitat units it is ranked as medium priority (5<sup>th</sup>) due to a relatively substantial diversion in this system.

### **Oopuola**

#### **Restoration Priority: High**

Oopuola stream has the potential for 20,616 habitat units, which is in the mid-range relative to other streams in this evaluation. It gradually enters marine waters at Makaiwa Bay, with no major barriers. Estuaries within this system are represented by a riverine estuary and estuarine bay. A recent stream check in October 2020 revealed an occurrence of juvenile oopu alamoo. Although Oopuola is in the mid-range for habitat units, it does have multiple estuary types, and a recent visit confirmed presence of indigenous aquatic resources. These considerations resulted in a high priority (3<sup>rd</sup>) relative to other streams in this evaluation. Additionally, it is important to note that the inclusion of this stream within the group of streams ranked as high priority maintains the appropriate ratio of streams with terminal waterfalls to streams with no major barriers near the coastline within the Huelo complex.

### **Puehu**

#### **Restoration Priority: Low**

Puehu stream has the potential for zero habitat units, which is in the lowest relative to other streams in this evaluation. It abruptly enters marine waters on the open coast with a terminal waterfall. The estuarine area at this site is likely to be minimal. This stream has not been recently visited by DAR staff. Due to a low potential for habitat units, relatively small estuary, and lack of knowledge on this system, Puehu stream is of low priority (10<sup>th</sup>) relative to other streams in this evaluation.

### **Nailiilihaele**

#### **Restoration Priority: High**

Nailiilihaele stream has the potential for 275,924 habitat units, which is the most relative to other streams in this evaluation. It abruptly enters marine waters at Kailua Bay with a terminal waterfall. An estuarine bay is found at the coastline of this system. A recent stream check in October 2020 revealed an occurrence of oopu nakea, opae kalaole, guppies, prawns, and swordtails (*Xiphophorus helleri*). This stream has a high potential for habitat units, an identified estuary, and a recent confirmed presence of indigenous aquatic resources. These considerations resulted in a high priority ranking (1a<sup>st</sup>) for Nailiilihaele relative to other streams in this evaluation. It is important to note that Nailiilihaele ends in the same bay as Kailua, which was also evaluated as a high priority stream. This should be considered in determining which streams to restore flows in order to ensure a broader distribution of restoration efforts within the Huelo complex. In other words, either Nailiilihaele or Kailua should be restored, not both, due to their adjacent proximity. This is why both Nailiilihaele and Kailua received similar (1a<sup>st</sup>) ranking.

### **Kailua**

#### **Restoration Priority: High**

Kailua stream has the potential for 130,209 habitat units, which is in the upper range relative to other streams in this evaluation. It abruptly enters marine waters at Kailua Bay with a terminal waterfall. An estuarine bay is found at the coastline of this system. A recent stream check in October 2020 revealed an occurrence of prawns. This stream has a high potential for habitat units, an identified estuary, and recent confirmed presence of a resource species. These considerations resulted in a high priority ranking (1b<sup>st</sup>) for Kailua relative to other streams in this evaluation. It is important to note that Kailua ends in the same bay as Nailiilihaele. Nailiilihaele is also ranked as high priority. This should be considered in determining which streams to restore flows in order to ensure a broader distribution of restoration efforts within the Huelo complex. In other words, either Nailiilihaele or Kailua should be restored, not both, due to their adjacent proximity. This is why both Nailiilihaele and Kailua received similar (1b<sup>st</sup>) ranking.

### **Hanahana (Hanawana)**

#### **Restoration Priority: Medium**

Hanahana or Hanawana stream has the potential for 2,633 habitat units, which is in the lower range relative to other streams in this evaluation. It gradually enters marine waters at Hanawana Bay, with no major barriers. Estuaries within this system are represented by a riverine estuary and estuarine bay. This stream has not been recently visited by DAR staff. Due to the combination of multiple estuaries, low potential for biological units, and limited biological information Hanahana stream received a medium priority ranking (7<sup>th</sup>).

### **Hoalua**

#### **Restoration Priority: Medium**

Hoalua stream has the potential for 24,959 habitat units, which is in the mid-range relative to other streams in this evaluation. It enters marine waters at Hoalua Bay with no major barrier. An estuarine bay is found at the coastline of this system. This stream has not been recently visited by DAR staff. Due to the presence of an estuarine bay and limited biological information Hoalua stream received a mid-priority ranking (4<sup>th</sup>).

### **Waipio**

#### **Restoration Priority: Low**

Waipio stream has the potential for 3,211 habitat units, which is in the mid-range relative to other streams in this evaluation. It abruptly enters marine waters at Waipio Bay with a terminal waterfall. An estuarine bay is found at the coastline of this system. This stream has not been recently visited by DAR staff. With a medium potential for habitat units and limited biological information, Waipio stream received a low priority ranking (8<sup>th</sup>).

## **Mokupapa**

### **Restoration Priority: Low**

Mokupapa stream has the potential for zero habitat units, which is the lowest relative to other streams in this evaluation. It enters marine waters on the open coast with no major barrier. The estuarine area at this site is likely to be minimal. This stream has not been recently visited by staff from DAR. Due to a low potential for habitat units, a relatively small estuary, and lack of knowledge on this system, Mokupapa stream is of low priority (9<sup>th</sup>) relative to other streams in this evaluation.

## **Hoolawa**

### **Restoration Priority: High**

Hoolawa stream has the potential for 225,737 habitat units, which is in the upper range relative to other streams in this evaluation. It abruptly enters marine waters at Hoolawa Bay, with a terminal waterfall. Estuaries within this system are represented by a riverine estuary and estuarine bay. A recent stream check in October 2020 revealed an occurrence guppies, prawns, and swordtails. This stream has a high potential for habitat units, multiple estuary types, and recent confirmed presence of a resource species. These considerations resulted in a high priority ranking (2<sup>nd</sup>) for Hoolawa relative to other streams in this evaluation.

## **Puakea**

### **Restoration Priority: Not Included in Ranking**

Puakea stream has the potential for 17,270 habitat units. It gradually enters marine waters at a bay with no major barriers. Estuaries within this system are represented by a riverine estuary and estuarine bay. This stream has not been recently visited by DAR staff. Puakea stream is part of the Nahiku complex, located quite a distance away from the Huelo complex. Due to the large distance from the other streams described above, it was omitted from the Huelo complex stream evaluation and was not prioritized.

BOARD OF LAND AND NATURAL RESOURCES

NOVEMBER 13, 2020

9:00 A.M.

Online via ZOOM, Livestream via YouTube

[blnr.testimony@hawaii.gov](mailto:blnr.testimony@hawaii.gov).

TESTIMONY

Re: **D-8** Holdover/Continuation 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

Members of the Board of Land and Natural Resources:

My name is Robinson David, farmer in Upcountry Maui. I strongly support this measure.

I farm various crops, green onions, Chinese cabbage, eggplant, baby pak choy, and other vegetables. I am on lease land so in addition to my farm inputs, I need to pay lease for the land. Water is very important and how much crop I can grow depends on how much water I have.

Please support of this measure so farmers like me can continue to farm. Thank you.

BOARD OF LAND AND NATURAL RESOURCES

NOVEMBER 13, 2020

9:00 A.M.

Online via ZOOM, Livestream via YouTube

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Members of the Board of Land and Natural Resources:

My name is Shep Murray, a long time Upcountry resident and retired former owner of Wai Ulu Farms. I strongly support the passage of these permits, providing water to Upcountry residents and agriculture.

Providing feed to Upcountry livestock has given me a great appreciation of the trials and tribulations ranchers undergo to keep their operations in production. I have seen the heartache and the pain in their faces when herds need to be culled due to the lack of feed.

I want to see agriculture continue in Upcountry .. or what will this precious rural countryside be? I don't want it to be it chopped up into homes with the wide open agriculture gone. During heavy storms I know Kihei experiences floods. Where does the water come from? Upcountry. And, this is with the existing open working agricultural lands. Imagine what will happen with increased roads and pavements .. Kihei can expect more floods. The reefs will have more silt and then we will have to spend monies to manage the floods.

Agriculture will need this water and the potential consequence of loss of the ag without water needs to be seriously considered. I respectfully request your consideration of all of the potential ramifications when making your decision. I believe support of this request is warranted.

Thank you.

 11/11/20

BOARD OF LAND AND NATURAL RESOURCES

NOVEMBER 13, 2020

9:00 A.M.

Online via ZOOM, Livestream via YouTube

blnr.testimony@hawaii.gov.

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Members of the Board of Land and Natural Resources:

My name is Terry Quisenberry, a long time Upcountry resident. I am in support of these permits.

I appreciate what is Upcountry Maui. I also volunteer on the Na Ala Hele (NAH) Maui Advisory Council, addressing trail access on State lands.

I see the need for balance between the needs of our forests and human activity. As we provide access for hiking, we also need to be sensitive to the forest ecosystem and ensure that we minimize disturbance and unnecessary impacts. In the same way, our forest ecosystems need water but our people and agriculture also need water. The purpose of this Board is to find the balance.

I understand water has been restored to critical streams. Upcountry during the past decades almost seems to be in constant drought. It is a challenge to find the balance if the quantity of resource keeps changing.

The Covid has increased our awareness of the need for local ag. Many of us have begun growing some vegetables at home. All of this needs water. I ask for your support in passing these permits to meet critical off stream needs. Thank you.

A handwritten signature in black ink, appearing to read "Terry Quisenberry", with a long horizontal flourish extending to the right.

BOARD OF LAND AND NATURAL RESOURCES

NOVEMBER 13, 2020

9:00 A.M.

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Members of the Board of Land and Natural Resources:

My name is Chris Baucus, Upcountry resident and retired principal from Kula School. I am in **STRONG SUPPORT** of the renewal of these permits.

I am a long time resident of Upcountry and as I retired from the school system want to return to ranching. I have many rancher friends and have helped them shoe their horses and other tasks as needed. I see the challenges faced by them as droughts extend and admire their commitment to ranching when there is great uncertainty if there will be water for them as these permits come before you every year. Most bankers will question why you invest in a business when the reliability of access to one of your major input resources is put into question every year.

I also believe in agriculture and am working on a farm for students in Keokea. That too is depend on these waters as water from these permits needs to be pumped to the water systems during a drought. A goal at this farm is to teach students about the importance and wise use of water resources. We also hope to grow farmers for the future.

All of these endeavors depend on the continued access to water. Your support with the passage of these permits will be appreciated.

Thank you.

A handwritten signature in black ink, appearing to be 'CB' or similar initials, written in a cursive style.

**From:** Robert Duerr  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Conflict of Interest on Maui Water Rights,  
**Date:** Tuesday, November 10, 2020 12:30:22 PM

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Aloha BLNR Board,

I have a question on conflict of interest with the Alexander & Baldwin and Mahi Pono's Water permits. Are any of the principals involved working for or have a relationship with The Nature Conservancy? If so have any members of the BLNR Board recused themselves on this matter?

Mahalo,  
Robert Duerr

Robert Duerr  
Senior Member Active  
Outdoor Writers Association of America  
Hilo, Hawaii  
[surf77@me.com](mailto:surf77@me.com)

TESTIMONY FOR THE MEETING OF THE  
BOARD OF LAND AND NATURAL RESOURCES  
NOVEMBER 13, 2020  
9:00 A.M.

Submitted via email: [blnr.testimony@hawaii.gov](mailto:blnr.testimony@hawaii.gov).

Regarding Agenda Item: Holdover/Continuation 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.

To the Members of the Board of Land and Natural Resources:

I am submitting my written testimony in **strong support** for continuation of the revocable permits to continue the supply of water on the Island of Maui.

As a former Director of the Office of Economic Development for the County of Maui, and a supporter of agriculture, it is important to support the continuation of water flowing to our farmers and ranchers, and to the thousands of residents on the island who rely on this source. The water delivery system is inter-connected between source and transmission. The interruption of that flow will affect thousands of our residents, farmers and ranchers, food security, and our Maui economy.

Maui County's food security and self-sufficiency requires the need for consistent water delivery to our farmers and ranchers. With drought conditions still prevailing, and the unknown of whether we will get rains during the winter season, it is prudent to consider current conditions that challenge us.

During pandemic times, it is inherent that we support our greatest need – food for our families. Understanding all the obstacles that affect this food security should also be considered as farmers and ranchers are on the brink of making tough economic decisions to survive. They are challenged with drought, axis deer (moving into their lands, eating their crops or eating feed meant for livestock), higher freight costs for farming inputs, and more regulations. Please give them assurances that the basic infrastructure of water will be there otherwise we will see ongoing closures of these businesses, many of whom are generational farmers and ranchers.

Without water resources to our Central Maui and Upcountry farmers and ranchers, there will be no way to further diversify our economy to agriculture. It is not only a county need but one for the entire state as each island grapples with moving towards a more diverse economic model. Please support the renewal of these permits to assist our community during these seriously challenging economic times.

Kay Fukumoto   
Maui resident  
[rmkhawaii@gmail.com](mailto:rmkhawaii@gmail.com)



# Hawaii Agriculture Research Center

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

*Ph: 808-621-1350*

*www.harc-hspa.com*

BOARD OF LAND AND NATURAL RESOURCES

NOVEMBER 13, 2020

9:00 A.M.

Online via ZOOM, Livestream via YouTube

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## TESTIMONY

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Members of the Board of Land and Natural Resources:

My name is Stephanie Whalen, Director of the Hawaii Agricultural Research Center, HARC. I am in strong support of the renewal of these Revocable Permits.

HARC worked with HC&S on many projects to improve water use efficiency. The erratic nature of water supplies was always a challenge and there were periods when no water was available for the upper fields as priority was given to the County systems. All of this happened before the orders to restore water in certain streams. I agree water resource uses should be balanced. I also know what it takes to grow crops on normally arid lands. These waters are critical for agriculture on Maui.

I respectfully request your support of this measure to ensure that Maui can increase their level of local self-sufficiency as well contribute to that of the State. We cannot talk about increasing agricultural production without water.

Thank you for providing this opportunity to provide comments on this important matter.

BOARD OF LAND AND NATURAL RESOURCES

NOVEMBER 13, 2020

9:00 A.M.

Online via ZOOM, Livestream via YouTube

[blnr.testimony@hawaii.gov](mailto:blnr.testimony@hawaii.gov).

TESTIMONY

Re: **D-8** Holdover/Continuation 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

Members of the Board of Land and Natural Resources:

My name is Clark Hashimoto, a fourth generation persimmon grower, owner of Hashimoto Persimmon Products in Upcountry Maui. I am in strong support of this permit approval request.

We have trees nearing 100 years on our farm. Trees take a long time to mature and produce fruit. Every year, we are very fortunate to have people from across the state waiting to buy our crop. Despite the Covid, we have been blessed to sell out our harvest every day. People enjoy our crop that making out efforts worthwhile.

Water is important not only for our trees but also for all of agriculture on Maui. We cannot depend on rainfall. My dad, John Hashimoto, was a founding member of the Olinda Kula Soil and Water Conservation District. The OKSWCD fought long and hard to get adequate water to the Kula farmers. Kula was one of the top producing agriculture districts in the State. Without water we cannot continue to grow these crops that define our island.

We respectfully request your support to pass this permit request

Thank you.



# Hawaii Agriculture Research Center

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

*Ph: 808-621-1350*

*www.harc-hspa.com*

BOARD OF LAND AND NATURAL RESOURCES

NOVEMBER 13, 2020

9:00 A.M.

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## TESTIMONY

Re: **D-8** Holdover/Continuation 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

Members of the Board of Land and Natural Resources:

My name is Stephanie Whalen, Director of the Hawaii Agricultural Research Center, HARC. I am in strong support of the renewal of these Revocable Permits.

HARC worked with HC&S on many projects to improve water use efficiency. The erratic nature of water supplies was always a challenge and there were periods when no water was available for the upper fields as priority was given to the County systems. All of this happened before the orders to restore water in certain streams. I agree water resource uses should be balanced. I also know what it takes to grow crops on normally arid lands. These waters are critical for agriculture on Maui.

I respectfully request your support of this measure to ensure that Maui can increase their level of local self-sufficiency as well contribute to that of the State. We cannot talk about increasing agricultural production without water.

Thank you for providing this opportunity to provide comments on this important matter.

DAVID Y. IGE  
Governor

JOSH GREEN  
Lt. Governor



PHYLLIS SHIMABUKURO-GEISER  
Chairperson, Board of Agriculture

MORRIS M. ATTA  
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 PHYLLIS SHIMABUKURO-GEISER  
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE BOARD OF LAND AND NATURAL RESOURCES

November 13, 2020  
9:00 A.M.

BOARD ITEM D-8

Holdover/Continuation 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-8 that requests an additional one-year holdover for four Revocable Permits issued to Alexander and Baldwin, Inc., and East Maui Irrigation Company. The Department of Agriculture (Department) supports the approval of this request that permits the supply of water to the State's largest contiguous area of prime agricultural lands in Maui, most of which are designated as Important Agricultural Lands.

The Department understands the practicality of minimizing system losses. However, we have strong concerns that the proposed required upgrades to the system will quickly become very costly to the permittee, and could cause them to decommission the system, or pass the cost to the users. Either option has significant downside to the growth and survival of diversified agriculture to Maui County and the State of Hawaii.

Achieving food self-sufficiency by increasing local food production is a top priority for the Administration. Continued access to agricultural irrigation water is fundamental to achieving this priority. We understand that Alexander and Baldwin has sold 30,000 acres or so of their prime agricultural land in central Maui to Mahi Pono who has identified irrigated pasture for beef cattle, diversified crops, bio-energy crops, and a new County agricultural park as some of the uses. The Hawaii Department of Agriculture believes that once established, these agricultural uses will substantially move the County and State goals towards increased food self-sufficiency.

Thank you for the opportunity to provide testimony on this item.

Sincerely,

A handwritten signature in cursive script, reading "Phyllis Shimabukuro-Geiser".

Phyllis Shimabukuro-Geiser, Chairperson  
Board of Agriculture



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)

MEETING OF THE HAWAII BOARD OF LAND AND NATURAL RESOURCES  
Online via Zoom  
[blnr.testimony@hawaii.gov](mailto:blnr.testimony@hawaii.gov)  
November 13, 2020

**Testimony on Item D-8: Continuation of Revocable Permits for water use to  
Alexander & Baldwin and East Maui Irrigation Company**

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 interests of our islands' diverse farmers and ranchers so they can provide for their communities.

**HFB strongly supports continuation of Revocable Permits to provide water to Maui County and to Maui's fertile agricultural lands.**

**Although the issue itself is complex and controversial, the right decision for Maui is clear.** The current COVID-19 pandemic has dramatically underscored the immediate need for our islands to become more self-sufficient, especially with regard to food production. The public strongly supports a robust and productive agricultural community. Without the continued supply of irrigation water via these RPs, Maui's agricultural lands will not be productive.

Most of Maui's farm and ranch lands depend on diverted waters to grow crops and raise livestock. *Without water, there can be no agriculture.* Without the continuation of these RPs, Maui's farmers and others will lose access to diverted waters, until such time as long-term water leases can be issued. This is an interim solution and part of the larger process to allow the fair distribution of water, while ensuring appropriate environmental stewardship.

The future of one of the largest contiguous active agricultural lands in the State is at stake. Farmers and ranchers on Maui cannot continue to invest in agriculture without the assurance of an adequate supply of reliable, cost-efficient water. Continuation of the revocable permits will allow uninterrupted irrigation of approximately 30,000 acres (23,000 acres of which is designated Important Agricultural Land) in Central Maui, as well as supply irrigation water to the small farmers of Kula, and provide public drinking water for tens of thousands of Upcountry Maui residents. Continuing these temporary permits until long-term leases are completed supports the State's goals and is consistent with the public trust.

Thank you for the opportunity to provide testimony strongly supporting passage of Agenda Item D-8, on behalf of our farmer and rancher members, many of whom rely on revocable water permits to supply Hawaii's residents and visitors with fresh produce, flowers, plants and other agricultural products, while stewarding the land and keeping our islands green and beautiful.

**From:** G Hooser  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Agenda Item: D-8: Relating to Continuance of Revocable Permits for the diversion of East Maui Streams by Alexander & Baldwin and Mahi Pono  
**Date:** Wednesday, November 11, 2020 12:26:28 PM

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Testimony to the:

BOARD OF LAND AND NATURAL RESOURCES November 13, 2020

Agenda Item: D-8: Relating to Continuance of Revocable Permits for the diversion of East Maui Streams by Alexander & Baldwin and Mahi Pono

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

I respectfully urge the Board to deny further permit extensions, complete the EIS and protect the resource. At the minimum, should the Board decide to extend the permits, strict conditions must be required to minimize the amount of water presently being wasted due to the antiquated systems and current inefficient water management practices. Please also consider putting into place further permit conditions as suggested in the Sierra Club testimony that will help ensure improved stewardship and the upgraded management these invaluable and very precious natural streams deserve.

As the former Director of the Office of Environmental Quality Control (OEQC), I have a special appreciation for protecting our natural environment and for following HRS Chapter 343. In addition, during my 8 years serving in the Hawaii State Senate I have seen up close and personal the role A&B et al has played in “gaming the system and banking the water.” The end result has been decades of mismanagement and unconscionable environmental degradation.

Thank you in advance for giving this the thought it deserves and then making a decision that's in the best interest of our natural environment, and for the generations to come.

Sincerely,

Gary Hooser  
808-652-4279

**TESTIMONY OF JEROME KEKIWI, JR.  
PRESIDENT, NA MOKU AUPUNI O KO`OLAU HUI**

**RE:**

**Agenda Item Page 3, No. 8.** Holdover/Continuation 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

before the Board of Land & Natural Resources  
November 13, 2020

Aloha. My name is Jerome Kekiwi Jr. and I am the President of Na Moku Aupuni o Ko`olau Hui. Our members are the lineal descendants and current residents of Ke`anae-Wailuanui in East Maui. We grow taro, fish, hunt and gather to feed our families as a way of life. We are the lead plaintiffs in the East Maui water cases. I would like to thank this board for its June, 2018 decision that restored East Maui streams.

I would also like to say that we appreciate the efforts of Mark Vaught, Director of Water Resources, and his staff at Mahi Pono, who have reached out to our community and tried to work with us to resolve issues we may have with the water. Recently our community received short-term CARES funding to conduct a water monitoring project, and Mark lent us a UTV that was greatly needed, so we appreciate his outreach to us.

It is unfortunate that we, including government, private business, and communities, have inherited a legacy in EMI's ditch system where the environment and people were exploited and destroyed without accountability. Dynamite was used to blow the mountains apart, create and connect these dynamited craters to collect and transport water out of the watershed. The people's whose lives depended on this water were also torn apart.

The 2018 CWRM and BLNR decision repeatedly states that it is the intention of this board that the streams be restored to the condition they were in before the ditches were built, but this is not what Mahi Pono is planning to do. Its abandonment permit applications leaves the existing infrastructure -- 74 miles of massive concrete dams, tunnels, siphons, gates, flumes and pipes -- intact. Their plan, in substance, is to seal an intake here and redirect waterflow there. But it is their plan that the massive

infrastructure stay in place. This is not what CWRM's decision states. CWRM's decision states that the streams were to be restored to the state they were in before the ditch system was constructed. So it's not personal, but we strongly disagree with the approach Mahi Pono is taking with its abandonment permit applications.

Having said that, we realize that the areas where the system of connected dynamited craters are situated would take tremendous resources to restore. But we would like to have meaningful consultation with Mahi Pono regarding their plans to leave the infrastructure intact, because we do not agree. We would like to work with all concerned to get the resources required to do the right thing by the people, the land and the water.

For much of the ditch system, there is nowhere else for the stream water to fall except into the EMI ditch system. It is automatic and cannot be avoided. Mark has said that to address that situation, water is re-directed in places to fall back into a stream.

In our watershed monitoring activities, we see for ourselves that the streams that are supposed to be 100% released are flowing above the diversions and are bone dry below. Perhaps there is a reasonable explanation for this, but we don't understand what is happening. Like everywhere else on Maui, we have been experiencing drought conditions, but when we look at the water flowing in the higher elevations, we do not understand why there is no water below.

The last A&B long-term lease expired in 1986, so it has been 34 years that BLNR has been working with A&B and EMI, now Mahi Pono, to sidestep the law by approving these holdover permits, without a long-term lease. This is how we see it. Our people are not stupid. They want to believe in the rule of law. But when they see things like this happening, it undermines their faith and confidence that they can trust government. It makes them very cynical.

In 2016, Judge Nishimura ruled that holdover permits were invalid. That's when A&B went to the legislature and got a three-year stay that allowed them to continue the diversions and prepare their lease application. In 2019, A&B's lease application was not ready, so it went back to the legislature and requested a ten-year extension. They were not successful. In a great coincidence, after its loss at the legislature, the Intermediate

Court of Appeals stepped in and vacated Judge Nishimura's decision, sending it back to the circuit court for an evidentiary trial. Na Moku appealed the Intermediate's Court decision and arguments were heard by our State Supreme Court in March of this year. We are still awaiting the Supreme Court's decision. In the meantime, A&B continues to divert the streams and if this board approves the application, A&B will have yet another year, 35 years of using a public trust resource without a long-term lease.

We have all inherited a mess and each of us is trying our best to deal with the situation. The way that EMI dealt with it in the past was abusive and disrespectful to our people, but they wouldn't have been able to do it without this state's permission and specifically, this board. Approving this holdover permit continues a very sad legacy.

Our community's mission is to be good stewards of the land and its resources. Whatever happens today, we would like to have a stronger and more cooperative relationship with all the stakeholders, to work together to take good care of the land and water. In the past, efforts at this have been blocked. We remain open to working with all stakeholders to move forward in a pono way.

Thank you for this opportunity to testify.

# # # # #

Board of Land and Natural Resources Meeting, November 13, 2020

Personal Testimony Submitted by Harold H. Keyser, Ph.D.

Item: Holdover/Continuation of Revocable Permits to Alexander and Baldwin, Inc., and to East Maui Irrigation Company, Limited, for Water Use on the Island of Maui.

Position: **Support**

Aloha Chairperson Case and board members,

My name is Harold H. Keyser, I reside in Kula, Maui, and I am pleased to provide this testimony in support of re-authorization of holdover revocable permits to Alexander and Baldwin and East Maui Irrigation Company for water use on the island of Maui. I am a retired agricultural scientist with 34 years of combined professional experience with the USDA Agricultural Research Service and the University of Hawaii, including 10 years as CTAHR's Maui County Administrator for the Cooperative Extension Service and the Agricultural Experiment Station.

I would like to briefly highlight the critical role that having dependable access to water from the EMI system has for many Maui residents and for our diversified agriculture.

In addition to supplying over 27,000 residents of Kula, Pukalani and Makawao with their household water, the EMI system delivers water to the diversified farming community in the Upcountry region, which includes vegetable, fruit, horticultural and livestock production. This includes the water used in the 450-acre Kula Agricultural Park which supports farmers on lots ranging from 10 to 30 acres. The ag park is full and is high demand, and our county government is now in consultation with A&B to purchase 870 additional acres which will nearly triple the size of the existing ag park.

A&B's former sugarcane land includes 27,000 acres permanently designated as Important Agricultural Lands, and continued water availability will be critical for the successful conversion to diversified agriculture currently being undertaken by the Mahi Pono LLC which purchased HC&S. They are currently diversifying into grass finished beef, citrus, coffee, potatoes, and macadamia nut as well as other candidate crops under evaluation, and an agricultural park. The conversion of former sugarcane and pineapple land to diversified agriculture has been very

challenging statewide, resulting in mostly fallow land - the one significant success is that of Kauai Coffee. The transition from sugarcane to large scale diversification by Mahi Pono is occurring rapidly and could become the largest and most successful conversion to date; some of that land depends on water that is under consideration in these permits. The many benefits to Maui from large scale diversified agriculture include less water use by the new crops compared to the former sugarcane plantation.

As previously acknowledged by DLNR, the outcomes of this reauthorization help to conserve and protect agricultural lands, promote diversified agriculture, and increase agricultural self-sufficiency, which is consistent with the public trust doctrine of our state's constitution. Many in Maui County will benefit, and I urge the board to reauthorize the holdover permits.

Thank you for this opportunity to testify, and thank you for your service to Hawaii.

BOARD OF LAND AND NATURAL RESOURCES

NOVEMBER 13, 2020

9:00 A.M.

Online via ZOOM, Livestream via YouTube

[blnr.testimony@hawaii.gov](mailto:blnr.testimony@hawaii.gov).

TESTIMONY

Re: **D-8** Holdover/Continuation 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

Members of the Board of Land and Natural Resources:

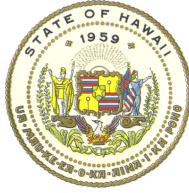
My name is Amy Lam, a sweet potato grower on Maui. I am in strong support of these holdover/revocable permits.

We lease nearly 500 acres of former HC&S lands and grow sweet potatoes. It is a family operation with my father, husband and a few employees. We are totally dependant on these waters, being on the former sugarcane lands. We have invested heavily with equipment to plant and harvest, install irrigation systems, fencing for feral pigs and deer, a potato washing plant, not to mention the vehicles needed to haul potatoes to the port and markets.

We leased the lands trusting that the water will always be there for us. We need these permits. Please approve these permits so we can continue to farm.

Thank you.

DAVID Y. IGE  
GOVERNOR OF HAWAII



SUZANNE D. CASE  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE  
MANAGEMENT

**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

November 10, 2020

**MEMORANDUM**

To: Darlene S. Ferreira  
BLNR Secretary

From: Ian Hirokawa  
Special Projects Coordinator

SUBJECT: Additional Materials for Item D-8, November 13, 2020

Please provide the following additional materials to all Board Members which are available via the following links:

1. CWRM Instream Flow Standard Assessment Summary (October 2020)  
<https://dlnr.hawaii.gov/ld/files/2020/11/2020-CWRM-Summary-of-Instream-Values.pdf>
2. Chart of DLNR Reports and Additional Information re: East Maui Streams  
[https://dlnr.hawaii.gov/ld/files/2020/11/STREAM-CHART-for-East-Maui-RPs\\_vFINALWITHLINKS.pdf](https://dlnr.hawaii.gov/ld/files/2020/11/STREAM-CHART-for-East-Maui-RPs_vFINALWITHLINKS.pdf)

Although the additional material is included in the appendix to the Board submittal, please provide the above links separately to all Board members so that the material is readily accessible. Thank you.



**Via E-Mail**

November 10, 2020

The Honorable Suzanne D. Case, Chairperson  
And Members of the Board of Land and Natural Resources  
Post Office Box 621  
Honolulu, Hawaii 96809

**Comments in Support of Agenda Item D.8 – Holdover/Continuation of Revocable Permits S-7263 (TMK (2) 1-1-001:44), S-7264 (TMKs (2) 1-1-001:050, 2-9-014:001, 005, 011, 012 & 017) and S-7265 (TMK (2) 1-1-002:por. 002) to Alexander and Baldwin, Inc., and S-7266 (TMKs (2) 1-2-004:005 & 007) to East Maui Irrigation Company, Limited, for Water Use on the Island of Maui.**

**Friday, November 13, 2020, 9:00 a.m., Online via ZOOM, Livestream via You Tube**

The Land Use Research Foundation of Hawaii (LURF) is a private, non-profit research and trade association whose members include major Hawaii landowners, developers, and utility companies. LURF's mission is to advocate for reasonable, rational, and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources, and public health and safety.

LURF submits that there are ample facts and evidence to **support passage of Agenda Item D.8 for the holdover/continuance of Revocable Permits to Alexander & Baldwin (A&B) and East Maui Irrigation Company (EMI) for Water Use on the Island of Maui.** LURF's position is based on the consistency of continuing said Revocable Permits with the purpose, intent and provisions of Hawaii Revised Statutes (HRS), Section 171-58 (as amended); and the fact that the continuation and issuance of the Permits are also consistent with the public trust doctrine. LURF's comments are based on information regarding and underlying the Permits, as well as laws and principles relating to land use, water, and the public trust doctrine.

## **Factual Background**

A&B and EMI have been pursuing a long-term lease in lieu of year-to-year revocable permits from the State for the East Maui stream waters since 2001. The lease process, however, has been impeded and delayed by numerous legal and regulatory challenges brought by opposition groups.

Pending resolution of such regulatory and legal challenges, the State issued annual revocable permits allowing the East Maui stream waters to continue to be collected and provided to the County of Maui for its Nahiku and Upcountry communities, and to the Central Maui agricultural lands which were formerly cultivated for sugar.

In 2015, however, a State Circuit Court decision invalidated State revocable water permits that had been in place for longer temporary periods of time, including the East Maui revocable water permits. The Circuit Court's ruling essentially provided that under HRS Chapter 171, the BLNR was only able to grant either one-year revocable permits, or long-term water leases, and nothing else – which left a number of permittees which have had revocable State water permits in place for longer than one year, in limbo.

To address and resolve the inequitable situation which had affected a number of permittees, the 2016 State Legislature passed Act 126 (effective July 1, 2016) to amend HRS Section 171-58, thereby affording the Board of Land and Natural Resources (BLNR, or Board) the authority to issue, on an annual basis, holdover permits to enable a previously authorized disposition of water rights to continue while a pending application for the disposition of said rights was being finally resolved or a total of three consecutive one-year holdovers, whichever is sooner; provided that the total period of the holdover for any applicant shall not exceed three years; and provided further that the holdover is consistent with the public trust doctrine.

Since the passage of Act 126 in 2016, BLNR has approved the holdover of revocable permits for water use, however, that Act expired in 2019 and the Legislature did not pass a bill to further extend the authority of BLNR to annually authorize the continuation of revocable water permits.

Meanwhile, in June 2019, the Hawaii Intermediate Court of Appeals (ICA) vacated the above-referenced 2015 Circuit Court decision that had invalidated the Revocable Permits. The ICA ruling has since been appealed to the Hawaii Supreme Court however, the Supreme Court has yet to rule on the matter. In the interim, the State Attorney General has determined that the ICA ruling enables the State to renew Revocable Permits beyond the end of 2019, and the BLNR has approved the holdover of Revocable Permits for water use pursuant to said ruling.

Later in 2019, the Sierra Club also filed a State Circuit Court action challenging the 2018 and 2019 renewals of the East Maui Revocable Water Permits. LURF understands that hearings have been held, however, the Circuit Court has not yet issued any ruling.

The Board's approval of this item will therefore authorize the continuation of Revocable Permits for water use through 2021, which will allow the continuation of the diversion of East Maui stream waters, subject to the State Commission on Water Resource Management's (CWRM's) Interim Instream Flow Standards (IIFS) order, to provide water to the County of Maui and to the Central Maui agricultural fields now being farmed by Mahi Pono, LLC.<sup>1</sup>

### **LURF's Position**

#### **Board Approval Will Authorize Vital Continuation of Revocable Water Permits Through 2021.**

LURF believes the drafters of the original version of HRS Section 171-58 could not possibly have anticipated, let alone intended the inequity of the application of the statute to extraordinary current situations involving a number of permittees of water rights, which have relied upon the waters for years past, and have made substantial investments based on said waters.

LURF further believes it would be unconscionable for this Board to stand by and ignore the potential agricultural, economic and social consequences, as well as the health and safety issues that could arise should it decide against exercising its authority to continue the Revocable Permits pursuant to HRS Section 171-58 (as amended) in situations such as the present, when in fact, underlying extraordinary circumstances exist, which are completely outside the control of said permittees, and where every effort within the permittees' control is being made to timely effectuate the issuance of a long-term State water lease.

Even given the opportunity to continue the Revocable Permits, the present reality is that the process for issuance of a long-term water lease requires completion of several complex, time-consuming regulatory processes,<sup>2</sup> and is fraught with

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<sup>1</sup> In December 2018, much of the former Hawaiian Commercial & Sugar Company (HC&S) sugar cane lands were acquired by Mahi Pono, LLC.

<sup>2</sup> Today, the process for issuing a long-term State water lease could include several important, potentially time-consuming regulatory processes, which were likely not contemplated by the drafters of HRS Chapter 171. Prior to the issuance of a water lease, required steps may include the following:

- An environmental assessment or environmental impact statement (compliance with HRS Chapter 343).
- The amendment of interim instream flow standards.
- An appraisal.
- Contested case hearing proceedings and other litigation.
- Conduct of the sale of the lease at public auction.

contested case hearing proceedings and other legal challenges, including litigation, brought by opponents of the disposition.

LURF believes it only right and fair that present permittees should, at the very least, be allowed to continue their Revocable Permits through 2021 to provide them with additional time to work with DLNR so long as they are making earnest effort to comply with the process required to secure their leases to continue previously authorized dispositions of water rights, and so long as the continuation of said Permits is consistent with the public trust doctrine.

Passage of this agenda item will enable the State of Hawaii to attain several critical objectives, including the following:

- Continue to make progress towards achieving its local food production and renewable energy goals;
- Provide a reliable source of irrigation water to farmers and ranchers State-wide, which supports the long-term viability and security of local agricultural operations; allows for the local production of food; and promotes the goal of food sustainability and food security in Hawaii;
- Allow local farmers and ranchers to continue agricultural operations on Maui, which have depended on access to water via Revocable Water Permits;
- Avoid significant disruption to on-going agricultural and renewable energy operations and give existing Revocable Water Permit holders time to pursue long-term leases with the State while maintaining access to an adequate supply of water.

**Continued Revocable Water Permits are Needed for the Public's Benefit Until a Long-Term Water Lease Can be Issued to Provide Water for Agricultural and Domestic Purposes in Central and Upcountry Maui.**

The potential invalidation of Revocable Permits on Maui which serve the water needs of the County of Maui and its 36,000 Upcountry Maui residents and small farmers, as well as 30,000 acres which had been farmed by HC&S prior to cessation of sugar operations at the end of 2016 and which is now being transitioned into a diversified agricultural model,<sup>3</sup> is of significant concern.

On the island of Maui, much of the water used for residents' domestic use and agricultural purposes in Central and Upcountry Maui would not be available until

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<sup>3</sup> Mahi Pono, LLC plans to cultivate these approximately 30,000 acres with diversified agricultural crops, the majority of which are food crops including orchards, tropical fruit crops, and row & annual crops; as well as energy crops and pasture.

a long-term State water lease is secured, which may be years away. This vital water source has enabled agriculture to thrive in Central Maui for over one hundred years and is essential to keep these lands in continued agricultural production after cessation of sugar operations. Ongoing efforts to transition Maui sugar operations to diversified agriculture (grass fed livestock, bio-energy crops, establishment of an agricultural park) are in jeopardy due to the need for an adequate and reliable supply of cost-efficient water.

This Board is requested to recognize that East Maui water is being utilized for the public's benefit. The Revocable Water Permits will continue to allow water to be provided for the following:

- agricultural irrigation needs for diversified agricultural production in Central Maui;
- domestic water needs for approximately 36,000 Upcountry Maui residents, public facilities, and businesses;
- agricultural irrigation needs of small farmers in Kula; and
- domestic water needs for the Nahiku community.

EMI, a subsidiary of A&B, has collected water from State lands in East Maui continuously for well over a century – since 1878, pursuant to various lease agreements, initially with the kingdom of Hawaii, and subsequently with the Territorial and State governments. In 1985, the State proposed the sale of a long-term lease for these waters, but that effort was ultimately stalled by a lawsuit filed by the Native Hawaiian Legal Corporation.

In 2001, A&B applied to the BLNR to re-initiate the lease process, recognizing that the lease would be put up for sale at a public auction; that preparation of an Environmental Impact Statement (EIS) would be required; and that IIFS would need to be established and acknowledged by the lease. Since 2001, however, the lease process has been fraught with, and held up by procedural and legal challenges initiated by opposing parties, and the request to issue a long-term water lease remains pending before this Board. In the interim, the BLNR has issued permits to enable the waters to continue to flow pending resolution of the legal and procedural challenges which would allow the lease process to ensue.

As articulated previously herein, the procedure for issuing a long-term State water lease is arduous and may entail several time-consuming regulatory steps and processes, some if not all of which have already extended for years, and may likely take more than an additional year to complete. LURF understands that A&B has undertaken action necessary for issuance of a long-term State water lease, and that the following is the status of the progress made thus far in this effort:

1. EIS. A Draft EIS was published for public review by the State Office of Environmental Quality Control in September 2019. Publication of the Final EIS is anticipated shortly.
2. IIFS. Standards have been established. In June 2018, the CWRM issued its IIFS decision for the petitioned East Maui streams.
3. Contested Case Proceeding on the Lease. This item is still pending and is expected to recommence following completion of the EIS and the initiation of the lease process by the State.

It is imperative that the BLNR allow Permits held by existing permittees to be continued pursuant to HRS Section 171-58 (as amended) in order that State waters which are used and relied upon may continue to be collected while the long-term lease process is properly and thoroughly vetted.

Particularly with respect to the Island of Maui, LURF understands that with the loss of sugar, if there is to be any chance of an agricultural future for Central Maui, as well as new economic opportunity and activity for the island while preserving its rural quality of life, access to the State's East Maui waters must be sustained through these Permits. Since many diversified agricultural crops have low tolerance to the salinity of water from Central Maui brackish water wells, a sufficient quantity of water from East Maui streams is critical to keep Central Maui in continued agricultural production, which is a key element of economic development for Maui County. In addition, the corona virus pandemic has significantly expanded the need for the County to diversify its economy beyond tourism and has reinforced the requirement for food self-sufficiency.

Should the continuation of Revocable Permits be denied, the future of the East Maui irrigation system and agriculture in general in Central Maui will be at risk, with ditches, roads, and other features of the irrigation system quickly eroding and otherwise falling into disrepair. The condition of lands recently utilized for sugar production, together with farm infrastructure will also deteriorate, making future farming even more costly.

LURF also understands that only the amount of water that is actually needed is being utilized by the existing permittee(s), and that most of the water diverted is going to the County for use by Upcountry Maui; the rest of the water remaining in the watershed for other uses.

As the BLNR is surely well-aware, title to water resources is held in trust by the State for the benefit of the people of Hawaii, including agricultural use of water to promote and implement the underlying intent and objectives of the long-awaited Important Agricultural Lands (IAL) laws (HRS Sections 205-41 to 52), which were specifically developed and enacted to fulfill the mandate in Article XI, Section 3 of the Hawaii State Constitution, "to conserve and protect agricultural

lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands.” This Board is requested to take into consideration that if water is not made available for use on lands designated as IAL, there lies a definite risk that those lands which then can no longer sustain agriculture may potentially be withdrawn from IAL and designated for use for other purposes.

**Conclusion.** In view of the fact that Revocable Permits must be continued in order that State waters which are used and relied upon may continue to be collected while the long-term lease process is properly and thoroughly pursued and vetted; that the present permittees are making convincing effort to secure the leases necessary to continue previously authorized disposition of water rights; and that the use of water pursuant to existing Permits is, in LURF’s opinion, incontrovertibly consistent with the public trust, the Board is respectfully requested to exercise its statutory authority to **allow for the continuation of Revocable Water Permits through 2021.**

Your consideration is greatly appreciated. Thank you for the opportunity to present comments regarding this important matter.

**From:** Linda LYERLY  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Testimony for East Maui water permits for meeting Nov. 12th at 9am  
**Date:** Tuesday, November 10, 2020 10:30:30 PM

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Board of DLNR:

Please consider reducing the water take you grant to East Maui Irrigation. My understanding is that there is a 70% water waste in this huge amount that is asked for. This overreach and non beneficial waste should be stopped and allowed to flow naturally back into the streams in order to perpetuate the Life of the Land. This seems a very reasonable ask. I am sure the benefits to East Maui out weigh the costs to achieve BMP (best management practices).

For too long our local politics have supported old systems of power. Please realize this is detrimental to Life in East Maui. Water is Life.

Let us reconsider and not allow wasteful practices that no longer serve. "Our future is not a gift, it is an achievement." JFK.

There is a mandate to uphold our State Motto. So let us move forward with justice and sustainable life for our land and people.

Sincerely with Aloha,

Linda Lyerly 100 Ala Hoku Pl., Lahaina



# MAUI

CHAMBER OF COMMERCE

VOICE OF BUSINESS

## Board of Land and Natural Resources

Re: D-8 Continuation of Revocable Permits for Alexander & Baldwin and  
East Maui Irrigation for Water Use on the Island of Maui  
Friday, November 13, 2020

Dear Chairperson Case and Members of the Board,

We strongly support the passage of item D-8 to continue revocable permits for water use and to issue a revocable permit for water use to Alexander & Baldwin and East Maui Irrigation Company.

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.

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 considerable progress on some of these steps including establishing interim instream flow standards and publishing a Draft EIS for public review. 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 agricultural operations with Mahi Pono, 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  
President

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.

**TO: Chair Suzanne D. Case and Members, Board of Land and Natural Resources**

**FROM: Professor Dick Mayer** [dickmayer@earthlink.net](mailto:dickmayer@earthlink.net) 808-283-4376

**RE: East Maui Water Lease Renewals**

**Agenda Item D.8. Holdover/Continuation 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.**

**November 11, 2020**

Aloha Board Members,

I am an UpCountry Maui resident of over 52 years, a former Maui County Planning Commissioner, and former Vice-Chair of the County's Maui Island General Plan Advisory Committee. Before retiring I taught economics and geography at Maui Community College for 34 years.

I am urging you to review very carefully the request from A&B to have their East Maui water leases permit renewed. I believe that to again renew their lease without adding strong conditions would be a very bad example of proper board behavior.

On July 8, 2016 (**OVER 4 years ago**) the Board of Land and Natural Resources (BLNR) requested/instructed/required that A&B and EMI prepare an Environmental Impact Statement for the East Maui lease areas. Your Board, the Maui communities and residents still do not have a Final-EIS.

14 months ago on September 23, 2019, A&B issued a very inadequate DRAFT Environmental Impact Statement for the lease area. That document prompted many, many residents of Maui and groups on Maui to comment on the deficient Draft-EIS.

As a sample of the testimony which was provided to A&B, I am attaching my own submitted comments on that September-2019 Draft-EIS. In my own comments for the Draft-EIS, I raised several questions and concerns regarding the potential issuance of water leases to A&B. Please consider those issues before automatically renewing the permits

A&B has delayed issuing the required Final-EIS for Board approval. Instead A&B continues to annually request RENEWABLE Permits with no FINAL-EIS.

The Board of Land and Natural Resources has been much too generous to Alexander & Baldwin (a Real Estate Company, NOT an agricultural corporation) because to-date BLNR has allowed Alexander and Baldwin to disregard their request for an East Maui lease area Environmental Impact Statement.

With regard to the deficient Draft-EIS I would like to point out that community and resident concerns emphasized numerous legal issues, physical aspects of the water system, agricultural operations, workers and housing etc..

I am now asking that if leases are being renewed that the State should at least raise the rates that the lessee would be paying to the State for the water. I request that the Board of Land and Natural Resources do several things:

1. Considerably raising the rates that A&B pays will generate revenues that can be used by DHHL Department of Hawaiian Homelands for much-needed housing.
2. Place a requirement on any lease renewal that this will be the last renewal that will be allowed, so that they will not be able to string out multiple renewals and in effect have a continuous long-term use of these waters.
3. Require that A&B include adequate and complete responses to all of the comments on the environmental impact statement that came in from the residents and groups who wrote extensively about the Draft EIS.
4. Require that A&B provide by February 1st 2021 a FINAL EIS document to the Board of Land and Natural Resources for its review and eventual approval.

While operating with a renewable permit A&B should demonstrate a commitment to the State's lease area by making a significant effort to restore the East Maui watershed; clean the ditches; and prepare a plan to decrease water waste by lining the bottom of the 40+ water reservoirs.

BLNR should also be aware that Maui County's Board of Water Supply has prepared a document examining alternative management possibilities. For example, the county might want to take over the leases and hire EMI employees to continue to operate the system; or alternatively, a quasi-public water management entity may be established to manage the collection and distribution of water from the East Maui's watershed. Please consider encouraging the county to investigate these possibilities, rather than allowing A&B to continue to get permits which they intend to hand over to the Canadians that own Mahi Pono.

I believe that to again renew the lease without adding strong conditions would be a very bad example of proper board behavior.

## **ATTACHMENT**

**My submitted testimony on A&B's September 23, 2019 DRAFT-EIS.**

## **Dick Mayer's comments on A&B's Draft-EIS**

**TO:** Applicant: Alexander & Baldwin Inc. (A&B)/East Maui Irrigation Company, Limited (EMI),  
Collectively referred to as "A&B" [waterleaseeis@wilsonokamoto.com](mailto:waterleaseeis@wilsonokamoto.com)

Consultant: Mr. Earl Matsukawa AICP, [waterleaseeis@wilsonokamoto.com](mailto:waterleaseeis@wilsonokamoto.com) (808) 946-2277,  
1907 S. Beretania Street, Suite 400, Honolulu, HI 96826

Approving Agency: Mr. Ian Hirokawa, [ian.c.hirokawa@hawaii.gov](mailto:ian.c.hirokawa@hawaii.gov)  
And Suzanne Case, Chairperson, Hawai'i DLNR  
151 Punchbowl Street, Honolulu, Hawai'i 96813

**FROM:** Prof. Richard "Dick" Mayer [dickmayer@earthlink.net](mailto:dickmayer@earthlink.net)  
1111 Lower Kimo Dr. Kula, Maui, HI 96790

**November 6, 2019**

**RE: East Maui Water Lease Draft-EIS**

**Proposed Lease (Water Lease) for the Nahiku, Ke'anae, Honomano, + Huelo License Areas**

### **INITIAL COMMENTS**

1. In the Executive Summary, page 1- 20, it is stated that BLNR on July 8, 2016 requested/instructed that A&B and EMI should proceed with the preparation of an Environmental Impact Statement. A copy of that document should be provided so that it may be determined whether the Final-EIS meets the requirements of the BLNR.
2. Was the **Final-EIS** intended to be prepared for an auction bid by A&B and EMI **only**? Alternatively, **was it meant to be generic**, applicable and available for anyone who makes a bid at the lease auction?

### **SPECIFIC CONCERNS**

#### **OWNERSHIP AND MANAGEMENT**

3. The Draft-EIS has capitalized "**EMI** Aqueduct System". This implies that EMI owns the aqueduct system. What proof is there of this ownership. Would it not be more correct to say "**East Maui's** aqueduct system" which has multiple owners?
4. Page 1 - 2 in section 1.3.1 there is an assertion made that **EMI is the owner of the EMI aqueduct system**. Provide proof that this is true, especially for the lands that are within the state lease area which I believe are owned by the State and could be utilized by anyone winning the lease in competitive bidding at an auction. The **aqueduct System on State lands does NOT belong to EMI**.
5. The draft EIS implies that the East Maui aqueduct system belongs to either A&B, EMI, or Mahi Pono. Provide detailed proof of ownership of the three separate sections of the East Maui aqueduct system: **a)** The portion within the four state-owned lease areas; **b)** the portion crossing the land now jointly owned by A&B and Mahi Pono; and finally, **c)** the portion of the system running from the A&B Mahi Pono lands to the Kamole Weir water treatment plant.

6. Even though Mahi Pono (at present a 50% owner of EMI) is registered in the United States (Delaware), seemingly it is not owned by an American entity. All of the Mahi Pono lands are ultimately owned by a foreign entity, which has established a domestic USA firm to merely own this investment. An additional complication in the ownership matter is that Mahi Pono is managed/operated by California interests, named Trinitas and Pamona Farming. There should be a clear explanation of the **management and financial relationships** among all of these entities: Hawaii's A&B and EMI, Canada's PSP, California's Trinitas and Pamona Farming, and Delaware's Mahi Pono.
7. Include in the Final-EIS any documents **that prove that the land under East Maui's aqueduct system** was transferred to A&B or EMI from the Kingdom. or Republic? or Territory? or State of Hawaii?
8. At the beginning of the Final-EIS, there should be a section devoted to the **ownership of Mahi Pono**. This should include the exact relationship between the investment company PSP, the California group known as Trinitas, the many, many LLC companies with Mahi Pono in their title and who are now the owners of numerous parcels of land throughout Central and North Maui.
9. The description should include both the financial relationships among these parties and entities as well as the decision-making management hierarchy among them. There should also be a very clear indication about how A&B's REIT (Real Estate Investment Trust) is linked to all of this. Apparently, the sales agreement between the two companies A&B & Mahi Pono leaves some question about the level of land ownership, easements, and other interest being maintained and retained by A&B.
10. Because the sales agreement that was publically displayed in December-2018 left many sections undisclosed, include the ENTIRE sales agreement between A&B REIT and Mahi Pono.
11. Describe the risks to the 2,550 Maui residents who will become dependent on the Mahi Pono farm plan, if MAHI PONO determines that it is **unprofitable to maintain its farming operations**.
12. Will the value of the marketed crops and animal products be **adequate to support this larger population, while providing investor PSP with an adequate profit?**
13. Is the **1938 agreement** the Territory of Hawaii and A&B **still relevant** today? If yes, then the 1938 agreement should be attached as an appendix and there should be an explanation as to how it is still relevant. It is referred to in the Executive Summary, page 1- 6 in the 3 middle paragraphs. On the other hand, is it only a part of the historical record, and not relevant to the auction?

14. Given the fact that Mahi Pono is owned by an international entity and that the profits from this entity will leave not only Maui, but the whole United States, what is the financial impact of a lease issued to a **non-Hawaii entity**, as compared to having the water lease obtained at auction: **a) by a Hawaii-based company, or b) by a public Maui Water Authority?**
15. In Section 3.4.20 Public Water Systems: Central Maui, it is **asserted that Central Maui receives its water from the East Maui aqueduct system**. The **potable water** used in Central Maui that is delivered by the Maui Department of Water Supply does not come from the aqueduct system. It is also false to say that the EMI aqueduct system is privately owned. Much of the so-called East Maui aqueduct system is on the State lease land and is NOT privately owned.
16. The last paragraph on page 4 - 140 is very important. The paragraph is important because it points to a fairly widely held belief that the **lease could be held by a public utility such as a Water Authority or by the Maui County Department of Water Supply**. (See the Maui Board of Water Supply TIG report of October-2019.) The paragraph's last sentence makes a very important point by asking who should get the profits from the sale of water delivered to central Maui.

## **FINANCES**

17. The Executive Summary, page 3 – 17, mentions that the cost of water to the County is now **\$0.06 MGD and that it could rise**. This could have serious effects on the ability of the County to provide water for the UpCountry region. What is the range of the maximum potential rise and how will it be calculated/negotiated?
18. Water prices are a matter of considerable interest to the UpCountry farmers who now utilize this potable water to irrigate their farms. There seems to be no way to provide farmers with non-potable water. Consequently, any rise in the rates paid by the County water department could have significant impacts. Address them in the Final-EIS.
19. On page 3-18 at the end of the next-to-last paragraph, it states that the **City of Honolulu would get a \$120,000 in tax revenues**. Please explain why they, and not Maui County, would get the funds.
20. The leaseholder will have an obligation to deliver water to the DHHL lands. Since it will be expensive to build an adequate water line from East Maui's aqueduct system to the Department of Hawaiian Homelands land in Keokea and Waiohuli, there should be a provision in the lease that will set aside funding over the years from the **license fees to construct the necessary pipeline to transmit that water** (over 10 MGD) across Kula. Please describe how that could work.

21. A missing part of the large Draft Environmental Impact Statement is any consideration of **Mahi Pono's (or any other successful bidder's) need to withdraw (cease operations) from using the East Maui water over the 30-year lease** period. It could be for reasons that are financial, agricultural, labor problems, or something else such as a sale of the Mahi Pono owned lands to some entity not interested in farming.

What would be the impact: a) on the East Maui watershed, b) the Maui County Department of Water Supply's commitment to the UpCountry water needs, c) the Hawaiian Homelands, and d) the agricultural lands now owned by Mahi Pono.

## **AGRICULTURE AND WATER SOURCES**

22. Various numbers are utilized throughout the document to explain the size of Mahi Pono's agricultural activities. There should be a clear table that explains the different land areas that are contained in the Mahi Pono purchase. For example, out of the 41,000 acres how much of it is **"Important Agricultural Land"**? How much is classified with a **Land Productivity** of A, B, C, D, or E? How much will be irrigated by water from **East Maui's aqueduct system, versus water coming from Na Wai Eha or central Maui wells?** How much land will actually be farmed?
23. **Groundwater** from wells in Central Maui Is discussed. Clarify. Does the **groundwater** from Central Maui wells also include water on the west side of Mahi Pono's land traditionally irrigated primarily from the Na Wai Eha watershed?
24. On page 4 – 5, it states that 4.9 MGD of water is delivered from **four UpCountry Wells** (Ha'iku, Po'okela and the 2 Kapakalua Wells). These wells are an important back-up source for UpCountry. How do these wells decrease UpCountry's dependence on East Maui's aqueduct system water?
25. On page 4 – 153, it states that 7.1 million gallons per day of UpCountry Maui's water comes from the East Maui irrigation aqueduct system. This is misleading since less than half of it is coming from the lease areas that are being analyzed in the EIS document. The rest is coming from other Mahi Pono lands, not the subject of this EIS. Correct this statement.

## **WATER USE**

26. The last two paragraphs on page 4 - 140 are very important. The first of these paragraphs misleads when it says that the EMI Aqueduct System supports the two water treatment plants known as Olinda and Piiholo. That is not accurate. Both of these plants get water from lands now owned by Mahi Pono, but are NOT connected to the aqueducts coming from the East Maui lease areas.

27. Pages 4 - 148. There needs to be an explanation as to why the **Maui Water Department needs so much more water after 2008** than in 2006. Going from 3.23 MGD to 7.1 MGD in such a short time frame. Does the 7.1 MGD count the water delivered from Piihola and Olinda? Kula Ag Park?

### **WORKERS AND HOUSING**

28. **Sugar plantation workers** were unionized, had very high level of technical skills, maintaining machinery, driving huge trucks, etc. and were **highly paid**. What will Mahi Pono do to recruit workers who can afford to live on Maui? What are the proposed salary rates? Moreover, if **workers are paid adequate living wages**, will those salary rates allow the leaseholder to have profitable agricultural operations? Discuss the labor situation at length.
29. Page 4 – 169. There is an estimate that there will be **more workers** needed than was the case with sugarcane, and that in addition to the employees there will be indirect employment (those servicing the Mahi Pono employees).  
790 farm jobs plus 350 additional indirect jobs → 1,140 workers. At least 2,550 family members.  
There needs to be robust discussion/analysis about how Mahi Pono will get workers given the Maui's existing very **low unemployment rate**. How many workers will need to be imported?
30. A very important consideration that has been left out entirely is **housing** for all of the new imported employees and their families. Not only will workers find it difficult to find a house, but they also will add to the pressure on the existing labor force who are seeking affordable housing.
31. **4 – 144, plus 4 - 145** refer to **labor problems and housing issues**. This should be a valuable and important part of the environmental impact statement. Unfortunately, there is no indication of how these issues will be handled (mitigated) in the future. There is a now shortage of workers on Maui and there is a very significant shortage of affordable housing for these employees. These very important impacts have NOT been mitigated, nor even addressed.

### **WATER USE AND CONSUMERS**

32. Reviewers of the Final-EIS will need to know **who might be consuming the water** being delivered from East Maui. For example, the Maui Water Department, Mahi Pono for the use on its agricultural fields, the Kula agricultural Park and it's future extension, Hawaiian Homelands (both UpCountry in Keokea and in Central Maui at Pulehunui), Nahiku residents. **Anyone else?** Only then can we know the impacts that these waters would have.

33. Provide a detailed listing of those entities that would have access to the water and **what they will be paying for that water**. At what **rates per 1,000 gallons will water be sold to each**? The same rate for each purchaser?
34. Be very specific as to whether there are any other potential users of the water. For example, A&B for use on its agricultural properties? Or A&B for use on **any non-agricultural development project**? Any other entity that might utilize the water for future non-agricultural developments?
- To determine all the potential environmental impacts and if Mahi Pono gets the East Maui lease at auction, **is A&B expecting to receive any water**? If yes, will the water be used for any non-agricultural development?
35. Describe the **impacts and implications if Mahi Pono decide that it no longer wants or needs the water** for agricultural uses. Could it be used for other purposes?
36. **Would the aqueduct system continue to be maintained** which may be necessary for both the Maui County Department of Water supply and for the Hawaiian homelands?
37. The paragraph at the top of page 4 - 58 makes it clear that CWRM considered it important to **allow water to be utilized on the IAL lands in Central Maui**. It did not make any provision for the use of water for any other Central Maui lands. The Final-EIS should differentiate between the IAL lands, and other Mahi Pono lands and water needs/uses in Central Maui.
38. In the Executive Summary, near the top of page 2 – 4, it indicates that the **DHHL staff has identified a need in the future for over 11 million GPD**. What effect will DHHL's needs (which by law must be satisfied) have on the Central Maui agricultural operations and on Mahi Pono's profitability?
- Describe the **specific impact that would take place when DHHL indicates that they wish to have the required 11 million gallons of water per day** for their use in Keokea and Pulehunui. What will be the effect at that time on the agricultural operations of Mahi Pono?
39. The discussion at the bottom of page 3 - 19 is **intended to significantly scare UpCountry farmers**. Since the majority of the water used in the UpCountry area does not come from the East Maui lease areas, the threat is not as dire as stated in the Draft. Please correct.
40. At present, about 17,000 acres of EMI lands are owned **50/50 by Mahi Pono and A&B**. How long will this last? What will happen after Mahi Pono becomes a 100% owner and how would that affect the water lease? Will A&B, (now a Real Estate Investment Trust (REIT), retain **any rights to the water**? Will A&B receive any discounted rates for the use of that water? Will they be able to use the water for non-agricultural purposes?

## East Maui Water Lease Draft-EIS Dick Mayer Page 7

41. It seems that the estimate for the **future payments by Mahi Pono** to the Department of Land and Natural Resources for the water is **absurdly low**. On page 4 - 150, they are estimating the cost to be \$0.10 per thousand gallons, giving the State an annual revenue of **only** about \$268,000 in 2030.
- This figure might make agricultural production very profitable, but it would deny DHHL the funds needed to bring water to the Hawaiian Homelands areas. That would be a serious negative impact, but would make Mahi Pono's investor very profitable.
42. On **page 4-150 and PDF pages 1777 + 1780**. It is unclear how the number \$846,700 was calculated or obtained. What is the referenced "Special Land Development Fund"? How is it different from the annual cost for the water lease?
43. On page 4 – 153, it is stated that there are 830 businesses in UpCountry Maui, generating an annual payroll of \$232 million. This seems very, very high. Consequently, an accurate source should be provided for these numbers, not just "Gale Cengage Learning".
44. On page 1793, 2<sup>nd</sup> paragraph, last word should be **billion**, not **million**.

### **MISCELLANEOUS**

45. The executive summary states in the second paragraph that no construction activity will be required. It seems that this is incorrect since there will be considerable construction activity to reconfigure many of the diversions, to close down a number of the diversions and to repair the ditch system where it leaks, and to restore reservoirs and irrigation systems. **Construction has impacts; what are they?** How will they be mitigated?
46. Because water has high value, indicate the potential for building **new reservoirs, water tanks and lining the existing reservoirs** throughout Central Maui. These one-time costs may provide considerable benefits and reduce negative impacts over the length of the lease and even thereafter.
47. It is mentioned several times that the food supply will be for **local** consumption. However, nowhere is it defined **what local means**. Does it mean Maui Island? Maui County? Or the State of Hawaii? Or something else?
48. The EIS states that there will be **250 acres** utilized for a **utility-scale solar PV operation**. The Solar PV developer AES has stated publicly that there will be about **500 acres** needed for that project. Please explain the difference.
49. There is a recommendation to form a **Core Working Group** made up of residents and communities that will be affected by this lease. The Final-EIS should make provision for how this group will be formed and how the leaseholder will utilize its input. Will their recommendations be merely studied or actually implemented? Will the leaseholder commit to financially helping to facilitate the Core Working Group's activities?

50. Executive Summary, page x. Will the leaseholder assist getting the **Core Working Group** into action as well as helping the Keanae and Wailua communities to move past historical impacts?
51. On the third line of the Executive Summary page xiii, the use of the word "**commercial**" raises a number of questions that are not examined elsewhere. Why is it being used here? What are the implications?
52. There are several references at the end of chapter 3 to the fact that the federal government's regulations allowing **herbicides and pesticides** means that there will be no environmental impacts. This is false since the federal government has permitted the use of toxic herbicides that have been shown (in several court cases) to cause severe health problems and the death of individuals.
- I am an example of that problem. Having used Monsanto's herbicide Roundup, I was diagnosed with stage 4 Non-Hodgkin's lymphoma, and I (and 40,000 other people) am now a plaintiff in a lawsuit against Monsanto for damages. The federal government's blessing and herbicide approval does not eliminate negative impacts that must be evaluated in the Final-EIS.
- There needs to be a strong statement in the Final-EIS that makes it very clear that Monsanto's **herbicide Roundup** or its generic versions will NEVER be used in the East Maui watershed. This overused chemical has been proven to be a cause of cancer. I am a personal victim.
53. Section 3.4.19 **Traffic**. There is a ridiculous assertion that there will be no traffic impact. However, the Draft-EIS also makes the claim that there will be an additional 2,550 individuals, if the lease is issued. How can it then assert that there will be no traffic impact? There certainly will be, and it needs to be discussed because Maui's roads are already crowded.
54. Somewhere in the introductory chapters of the environmental impact statement there should be a clear statement that these auctioned "**public waters**" are for potentially private use and sale. They are governed by the State of Hawaii's "**public use**" doctrine. Implications and impacts of that doctrine on the lease of these waters needs to be clearly explained and legally defended.
55. With regard to 3.4.1 Public Services and Facilities, it is stated that there will be no impacts. Since we now have full employment on Maui Island, it can be presumed that the impacts will come from the additional 2,550 additional residents resulting from the Mahi Pono operations. Such a large number of **additional Maui Island residents will have numerous public services and facility impacts**, ranging from schools, playgrounds, traffic, potable water needs, wastewater, solid waste, to both police and fire protection.

56. Figure 4-1 on PDF 115 only has the green areas indicated. The developed areas in blue are not disclosed. Show the "Developed open space."

**57. Chapter 5** I was the Vice-Chairman of the General Plan Advisory Committee that developed the Countywide Policy Plan and the Maui Island Plan. In Chapter 5, the East Maui Water Lease Draft Environmental Impact Statement makes a mockery of the goals and objectives that are found in the two plans.

Whenever there is a policy or objective in the table that would violate the two plans, the Draft-Environmental Impact Statement merely states that the goal or objective is "**N/A**" (**Not Applicable**). There are dozens of instances of this avoidance of compliance with the Maui Island Plan and the Countywide Policy Plan. Do you see even ONE instance where they show any impact? The tables are majorly incorrect, misleading and dishonest

If the Final-EIS persists in indicating that either or both the Maui Countywide Policy Plan or the Maui Island Plan do not have any negative impacts from an East Maui Water Lease, then it will be challenged vigorously as being a whitewash and unresponsive to the Maui County General plan.

The policies and objectives of the two plans will be seriously impacted and violated. The fact that water has been removed from East Maui for over a century, coupled with the fact that less water will now be withdrawn, does not mean there will be no or a low level of impacts. The Final-EIS should make that clear and also indicate how those impacts will be mitigated. Impacts need to be addressed.

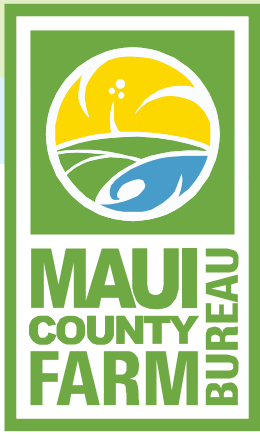
59. In Appendix G on page 106, there is a very useful recommendation to form a Core Working Group. The paragraph headed by the word "Transparency", discusses a long-standing problem with skepticism over the water withdrawals that have been held in the past. The exact statement reads as follows, "The proposed action has elicited skepticism and distrust over many decades, and these feelings prevent willingness for participating in mediation and collaboration. While developing trust among the various groups will be challenging, the first step is transparency. Being open about intent, plans and activities can begin to establish credibility and open the door to dialogue."

This is an insightful recommendation and needs to be followed up, earlier rather than later. Many issues will arise over the succeeding months and years, before and after the lease is issued. There needs to be an excellent relationship between the leaseholder and the broader Maui community. The leaseholder should not be afraid to create the recommended Core Working Group that will serve not just as a "yes" sounding board. It should be a group that can critique operations, evaluate lease compliance and provide useful advice that must be handled appropriately by the leaseholder.

60. Missing from the Draft-EIS is a comprehensive analysis of the effects on Maui's economy of having a water lease controlled by an off-island entity. If the water lease is obtained by a non-Maui or non-Hawaii entity whether it be based in California or Montreal, there are significant impacts to Maui's economy that need to be understood, analyzed, and if necessary, mitigated.

Presumably, the use of the water from the lease areas will generate very sizable profits. If these profits are going to be shipped elsewhere as now happen so often with Maui's many off-island, owned hotels, there would be negative impacts by comparison to having that water utilized and operated by a Water Authority or some other institution that is locally based. Revenues and profits would circulate and multiply on-island.

Because of this impact of exported, disappearing profits, the Final-EIS must describe how those funds could remain in Maui and benefit the residents of Maui, solving problems such as affordable housing, highways, infrastructure, etc. Profits draining away from our tourist industry have resulted in local residents being unable to afford a home. Similarly, an off-island leaseholder could do similar damage to its own employees who would have difficulty purchasing or even renting a home.



BOARD OF LAND AND NATURAL RESOURCES

NOVEMBER 13, 2020

9:00 A.M.

Online via ZOOM, Livestream via YouTube

[blnr.testimony@hawaii.gov](mailto:blnr.testimony@hawaii.gov).

PO Box 148, Kula, HI 96790  
[mauicountyfarmbureau.org](http://mauicountyfarmbureau.org)

**Executive Director**

Warren K. Watanabe

**Board of Directors:**

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Carver Wilson

TESTIMONY

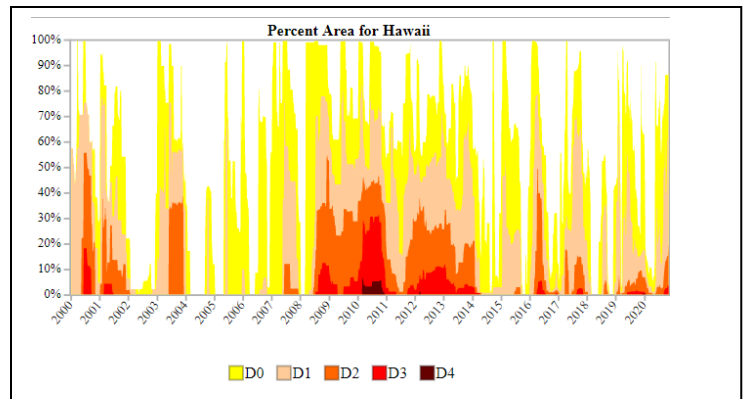
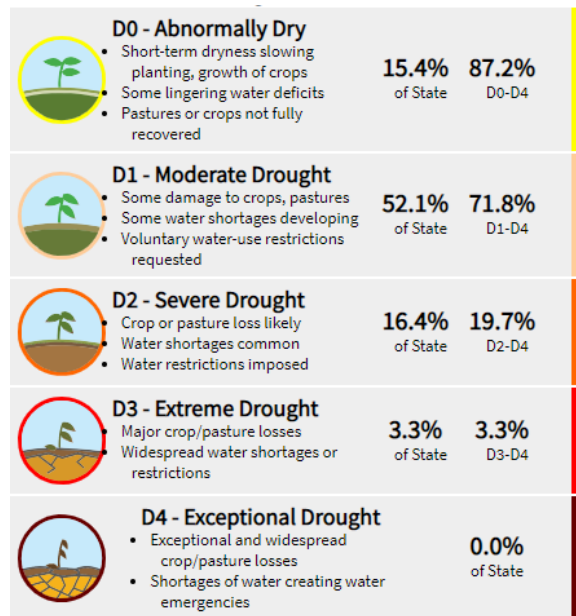
Re: Holdover/Continuation of Revocable Permits S-7263 (Tax Map Key (2) 1-1-001:044), S-7264 (Tax Map Keys (2) 1-1-001:050, 2-9-014:001, 005, 011, 012 & 017) and S-7265 (Tax Map Key (2) 1-1-002:por. 002) to Alexander and Baldwin, Inc., and S-7266 (Tax Map Keys (2) 1- 2-004:005 & 007) to East Maui Irrigation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

Members of the Board of Land and Natural Resources:

Maui County Farm Bureau, on behalf of our farmers and ranchers and associated agricultural organizations is in **strong support** for continuation of the revocable permits to Alexander and Baldwin, Inc. and East Maui Irrigation Company for water use on the Island of Maui.

These water resources are critical to the viability of our farms and ranches in Upcountry and Central Maui. As the realities of Covid-19 became apparent, the urgent need for a level of agricultural self-sufficiency suddenly became a priority. However, all the intentions to have a strong local industry will be for naught if there is no water ... no water, no farms.

Upcountry Maui is the breadbasket for Maui. Its' climate provides the best location for many crops and it is the home to heritage crops such as Kula Onions and persimmons. The area is mostly dependent on surface water and is also very drought prone. Maui currently is in a serious drought. The following chart shows the percent of areas in drought in the State of Hawaii over time. . Much of the D2, D3 and D4 areas, the most serious categories have been on Maui, predating the new IIFS requirements. Over the last few decades, 2008-2015, we experienced the longest drought in recorded history. Provisions to ensure water supplies during this period is not after the drought arrives but rather in preparation for those events.



Farmers and ranchers have been through difficult times not just because of drought but market conditions and pests. This makes them risk averse and if droughts are eminent, plantings will decrease. Currently, ranchers are looking at culling of herds.

On November 9, Maui News reported:

*“Most areas of the state did start off the dry season drought-free because of wet conditions earlier in the year,”* said Kevin Kodama, senior service hydrologist for the National Weather Service in Honolulu, during a briefing on Hawaii’s wet season outlook Friday. *“The big exception was Maui County, and that’s because they had a drier wet season . . . compared to other counties. So they got a head start as far as drought impacts.”* ... Maui County could use the moisture, especially after a dry season that saw some areas, especially the leeward sides of Molokai and Maui, reach the “*extreme drought*” category.

*“That has really affected agricultural operations, especially the ranching sector where pasture conditions are extremely bad and . . . the public water supply has also been affected,”* Kodama said.

In July the Maui County Department of Water Supply asked customers in West Maui and Upcountry to conserve water due to the lack of rainfall. Parts of Maui County were in moderate drought at the time, and the county was expecting the drier conditions to lead to greater demand for Upcountry’s reservoirs. In early September the county declared a Stage 1 water emergency declaration for both areas and imposed mandatory restrictions on water use.

This demonstrates the urgency for the approval of the revocable permits. Without these waters, upcountry will not have water. The systems are interconnected which is advantageous for Upcountry as water can flow even if certain areas such as Piihola are dry .. Kamaole waters pumped up to the system keeps the water flowing. In the last decade,

rainfall on Maui has turned sporadic and erratic. Rain can be pouring in one location and bone dry just a few feet away. The length of ditch associated with these revocable permits gives maximum opportunity to capture some water during these drought periods.

Maui, as the rest of the State seeks increased levels of agricultural self sufficiency. Agriculture is risky business. Market prices can fluctuate wildly with product from the continent or even Europe competing with our growers. Cost of production is critical. Dry periods bring on pests attracted to stressed plants. Without water, investments of seed, planting and fertilizer is lost with no opportunity to recover revenue. Tree crops are being planted in Central Maui with hope for the return of a green valley that identified Maui. Fruit trees require water at specific times to allow fruit growth. Without water at these key times, production will fall. Stressed trees too will attract pests.

At one time Maui was the breadbasket for the State producing much of the vegetables .. and not just for the State but for the West Coast as well. The potential is there, but not without water.

Maui County Farm Bureau respectfully requests your strong support for the continuation of the revocable permits for A&B and EMI. Our future depends on it.

Thank you for this opportunity to provide our input on this important topic.

**From:** Mavis Oliveira-Medeiros  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Land Division #8, Holdover confirmation of revocable permits s-7263-s-7266  
**Date:** Thursday, November 12, 2020 9:00:47 AM

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Aloha Board of Land and Natural Resources:

I am writing to oppose the above mentioned "Holdover confirmation revocable permits" for the following reasons:

1. A & B, EMI, Mahi Pono knew the lease was expiring long ago, years. They didn't fulfill their obligations, therefore it should have ended last December, if memory serves me correctly.
2. Mahi Pono should prove how much water is needed for their farming needs and why they can't use what is in their reserve wells. Heard that there is over 126 million gallons.
3. We no longer have sugar cane, which was the original intent for the need for water. That need no longer exist.
4. No "one entity" should have the rights to the usage of all the water or most of it from East Maui. It should be shared.
5. Water is a public resource and shouldn't be used to benefit only one business. That is not public, it's corporate.
6. A & B, EMI, Mahi Pono diverts so much water, making it look like they need that much, when much of it is wasted. Stop wasting our water.
7. No EIS was done as promised, therefore, obligations by A&B/EMI have not been met, therefore permits should not be awarded to them.

Please do not award them all of the permits they request. No need to go all the way back to Hana/Nahiku. The last two should suffice for now. Maybe even one. They are illegal right now and should not be allowed to do this.

Mahalo,

Mavis I. Oliveira-Medeiros,  
Resident, East Maui

**From:** john meier  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Public testimony for agenda item D8 of BLNR November 13 meeting  
**Date:** Wednesday, November 11, 2020 4:57:43 PM

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To: Board of Land and Natural Resources, State of Hawaii

Re: Public testimony for agenda item D8 of BLNR November 13 meeting

Renewal 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.

My request is the same as last year - any renewal of revokable water permits 7263, 7264, 7265, and 7266 should include the following statement:

“Public access is allowed in the Ko’olau Forest Reserve for recreational and cultural uses, according to the rules of the Division of Forestry and Wildlife.”

This request has broad support on Maui -- including the Na Ala Hele Maui Advisory Council, the Mauna Ala hiking group, Sierra Club Maui Group, the Maui Hiking Community Facebook group, and the Maui Division of Forestry and Wildlife.

Thank you for the opportunity to comment on how to improve Public Access on Maui.

-John Meier

3600 Wailea Alanui Dr Apt 305  
Kihei, HI 96753

## ITEM D-8

**From:** Caleb Merendino <[ca.joe.mere@gmail.com](mailto:ca.joe.mere@gmail.com)>

**To:** DLNR.CO.PublicDLNR

**Subject:** [EXTERNAL] Connecting

Honorable Director and Board Members,

Naturally flowing streams with abundant native stream life, livable communities with accessible water and traditional food cultivation, and diversified agriculture for local food production are all critical to a sustainable future for Maui and the rest of Hawai'i. There is enough water to support all of these systems, if East Maui's waters are taken care of and are not being wasted. Please restore East Maui's streams by putting new conditions on Alexander & Baldwin and Mahi Pono's revocable permits that reduce the amount of water they are needlessly wasting. Require that Alexander & Baldwin and Mahi Pono line six of their reservoirs to reduce waste and ultimately keep more water in East Maui's streams. Alexander & Baldwin, East Maui Irrigation and Mahi Pono were granted temporary permits last year to divert 45 million gallons of water a day. By their own record, the diverters have removed 22.6-27.7 million gallons of water a day yet can only account for about 7 million gallons of water a day for all of its use, including serving the County's drinking water needs, the Kula Agricultural Park, Central Maui diversified agriculture, firefighting and dust control needs. That means more than 70% of the water that is diverted is being wasted. It's being wasted while streams run dry—native ecosystems suffer, residents along streams go without water, and drought conditions and restrictions exist. No longer should massive amounts of East Maui's precious stream water be wasted. The Board should implement conditions in Alexander & Baldwin and Mahi Pono's permits that require lining six of their reservoirs to reduce the amount of water wasted and keep more water in East Maui's streams.

Thank you for this opportunity to testify on this important matter.

- Caleb Merendino

BOARD OF LAND AND NATURAL RESOURCES

NOVEMBER 13, 2020

9:00 A.M.

Online via ZOOM, Livestream via YouTube

[blnr.testimony@hawaii.gov](mailto:blnr.testimony@hawaii.gov).

TESTIMONY

Re: **D-8** Holdover/Continuation 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

Members of the Board of Land and Natural Resources:

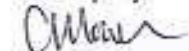
My name is Chauncy Monden, a third generation Upcountry farmer. I am in strong support of these permits.

I farm strawberries, onions and other vegetables in Kula. We also have a vegetable stand and we are known for our pumpkins in the fall. We also help local farmers sell their produce at our vegetable stand.

We are a family operation, totally dependent on the farm for our income. My children are entering Universities and I often worry about the viability of our farm to see them graduate and pursue their career choices. I would like to see our farm continue beyond my generation, but it needs to be viable. Market and pest pressures can be overwhelming, but we also face the question of whether water will be available for us to farm. Continued drought events are reason for concern.

The approval of these permits will give us hope and we look forward to a long term solution. It is difficult to look into the future when our major resource is in question.

Thank you,



Chauncy Monden

BOARD OF LAND AND NATURAL RESOURCES

NOVEMBER 13, 2020

9:00 A.M.

Online via ZOOM, Livestream via YouTube

[blnr.testimony@hawaii.gov](mailto:blnr.testimony@hawaii.gov).

TESTIMONY

Re: **D-8** Holdover/Continuation 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

Members of the Board of Land and Natural Resources:

My name is Wes Nohara, Upcountry resident and taro leaf farmer in Upcountry Maui. I am in STRONG SUPPORT of the renewal of these permits.

I have been an agricultural farmer on Maui for over 40 years. My first 30 years as a pineapple farmer with Maui Pineapple Company and the last 10 years as an independent taro grower.

The demand for taro leaves is strong and I depend on a regular source of water to produce my crop. I understand the importance to address the needs of the forest and aquatic ecosystem, however, our Constitution recognizes the beneficial use of water.

These permits are critical to my ability to farm and for my domestic home water, which is provided by the County of Maui but dependent upon these water sources. Thus I urge the Board to find the balance and in the process consider the importance of other agricultural and domestic uses. I respectfully request your support of these permits.

Thank you.



OFFICE OF HAWAIIAN AFFAIRS

Administrative Testimony

Testimony of Sylvia Hussey, Ed.D  
Ka Pouhana, Chief Executive Officer

Board of Land & Natural Resources

Submittal Item D-8

HOLDOVER/CONTINUATION 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.

November 13, 2020

9:15 a.m.

YouTube

The Administration of the Office of Hawaiian Affairs (OHA) **OPPOSES** the holdover/continuation or renewal of the subject water revocable permits (RPs), as proposed in the draft submittal. While OHA appreciates the submittal's increased attention to public trust issues that have been raised in previous years, OHA notes that the submittal and its recommendations fail to comply with the requirements of the environmental review law embodied in Hawai'i Revised Statutes (HRS) Chapter 343 and Hawai'i Administrative Rules (HAR) Chapter 11-200.1, and further fail to ensure that the contemplated holdover or renewal of the East Maui RPs is consistent with the Board of Land and Natural Resources' (Board's) responsibilities under the public trust doctrine.

**1. The proposed categorical exemption from environmental assessment requirements cannot apply to the contemplated RPs.**

As an initial matter, OHA appreciates the submittal's recognition that the action of renewing or "holding over" the RPs at issue is a "use of state land" triggering the environmental review requirements of the Hawai'i Environmental Protection Act, codified in HRS Chapter 343 and implemented via HAR Chapter 11-200.1. However, the "exemption notification" attempting to exempt this action from HRS Chapter 343's environmental assessment requirements contradicts information found within the very submittal itself, and conflicts with clear legal standards that preclude the application of any categorical exemption to the RP renewal "action" at hand.

- a. The diversion of up to 45 million gallons of water per day from East Maui's watersheds and the disruption of mauka-to-makai stream flow, which would fall within the "outer limits" of what these RPs allow, cannot be considered to "probably have minimal or no significant effects."

First, the holdover or renewal of the subject RPs for an additional year cannot be considered to “probably have minimal or no significant effects,” and therefore cannot be considered eligible for a categorical exemption from HRS Chapter 343’s environmental assessment requirements, particularly given the range of high-impact activities the RPs, as presented, would allow the permittee to do.<sup>1</sup>

The rule section implementing HRS Chapter 343’s categorical exemption authority, HAR § 11-200.1-15, explicitly acknowledges that “some actions, because they will individually and cumulatively probably have minimal or no significant [environmental] effects, can be declared exempt from the preparation of an [environmental assessment]” (emphasis added). **In other words, an action must “probably have minimal or no significant effects” in order to be granted an exemption from environmental assessment requirements.**

The Hawai’i Supreme Court, meanwhile, has also made clear that, in evaluating a permitting action under our environmental review law, “the properly defined activity for the purposes of the [Hawai’i Environmental Protection Act] analysis must encompass the outer limits of what the permits allow and not only the most restrictive hypothetical manner in which the permits may be used” (emphasis added).<sup>2</sup> **In other words, for the purposes of environmental review, the Board’s consideration of whether the holdover or renewal of the subject RPs will “probably have minimal or no significant effects” must consider everything that the RPs would allow the permittee to do.**

As presented in the submittal, the RPs here would allow the permittee to divert up to 45 million gallons of water per day (mgd), twice the amount of water it has diverted over the last three years, with no limitations or conditions as to how much of this water could be diverted from any particular stream not covered under the Water Commission’s recent interim instream flow updates. **The diversion of 45 mgd from East Maui, which would otherwise recharge groundwater sources, provide critical habitat services for riparian flora and fauna, and contribute to the estuarine conditions necessary for limu and other marine life that in turn support the overall ecological integrity of East Maui’s coastal areas (as well as associated subsistence and Native Hawaiian traditional and customary practices), cannot be considered as “probably hav[ing] minimal or no significant effects” as would be necessary for any categorical exemption to apply. The “outer limits” of the RPs at issue here would also allow for the disruption of mauka-to-makai connectivity, if not the complete diversion, of entire streams, which could also result in the extirpation of riparian and nearshore aquatic life that may take years if not decades to recover.**<sup>3</sup> Notably, in light of their isolated character, many of

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<sup>1</sup> HAR § 11-200.1-15 (“Some actions, because they will individually and cumulatively probably have minimal or no significant [environmental] effects, can be declared exempt from the preparation of an [environmental assessment]” (emphasis added)).

<sup>2</sup> *Umberger v. Dep’t of Land & Natural Res.*, 140 Hawai’i 500 (2017).

<sup>3</sup> OHA does note and appreciate the condition requiring the permittee to “cooperate with CWRM and DAR in studies, site inspections, and other actions as necessary to address the streams in the license areas not covered by

East Maui's streams and the estuarine areas they serve are also critical nursery areas for riparian and marine life and should also be considered "**particularly sensitive environments**" that can further preclude the applicability of categorical exemptions to environmental assessment requirements.<sup>4</sup>

Accordingly, a categorical exemption cannot be found applicable to the recommended renewal or holdover of the East Maui RPs, given the "outer limits" of what would be allowed in this submittal's recommendations.

- b. The clearly contemplated continuation of the East Maui stream diversions through and beyond 2029 must also be evaluated as a whole for the purposes of applying a categorical exemption, and the series of actions underlying this continuation cannot be considered to have "probably minimal to no significant effects."

Second, even if this year's renewal or holdover of the East Maui RPs could be found to "probably have minimal to no significant effect," the cumulative impact of the clearly planned successive annual holdover or renewal of such RPs – up to and including the issuance of a long-term water lease – would also preclude the application of any categorical exemption from state environmental assessment requirements.

HAR § 11-200.1-15(c) states that "all exemptions . . . are inapplicable when the cumulative impact of planned successive actions in the same place, over time, is significant[.]" **In other words, if an action is contemplated to be one in a series of actions over time and in the same place, the entire series must be considered as a whole, for the purposes of determining whether or not they may have a cumulative significant impact precluding their exemption from environmental assessment requirements.**

Here, the RPs at issue have been continuously held over or renewed for the last 17 years, and the submittal's express language clearly envisions the continued, continuous diversion of East Maui's streams, whether under RP or lease status, to support Mahi Pono's activities to 2029 and beyond.<sup>5</sup> **Accordingly, this year's renewal or holdover of the East Maui**

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the [Commission on Water Resource Management (CWRM)] order." See Submittal at 26. However, there is no substantive protection actually provided by the terms of the proposed RP conditions and no specified plans for any ecological monitoring, much less actual restrictions, that would provide meaningful protection for native flora or fauna or associated subsistence and cultural practices from significant negative effects. Accordingly, the Board has no basis to determine that the "outer limits" of the RPs as presented will preclude the significant and obvious potential effects of dewatering streams not subject to the CWRM order.

<sup>4</sup> HAR § 11-200.1-15(c) ("All exemptions under subchapter 8 are inapplicable when the cumulative impact of planned successive actions in the same place, over time, is significant, or when an action that is normally insignificant in its impact on the environment may be significant in a particularly sensitive environment" (emphasis added)).

<sup>5</sup> See Submittal at 6 ("Although Mahi Pono has not planted this year as much as planned due to the COVID-19 pandemic, Mahi Pono has confirmed that it intends to still achieve full build out of its 30,000 acres pursuant to its farm plan by 2029. In addition to the direct irrigation of crops, the continued diversion of water through the ditch

**RPs is but one of a planned, successive series of actions to allow for the continuous, indefinite diversion of East Maui's streams throughout and beyond the next decade.** Again, if the cumulative impact of such a series of actions in East Maui will be significant, a categorical exemption to environmental assessment requirements cannot be applied.

**As described above, the diversion of 45 mgd from East Maui and the potential partial or complete diversion of mauka-to-makai stream flow that would be allowed under this year's RP renewal – when multiplied by a series of similar dispositions for the next decade or longer – must be considered as potentially significant.** Notably, the ongoing preparation of a full environmental impact statement by the permittee for its desired long-term lease over East Maui's streams is only further acknowledgement of the significant impact that would inevitably arise from such a series of actions.

**Thus, insofar as there will be significant, cumulative impacts from the planned series of actions that would allow for the continued diversion of East Maui's streams, up to and beyond 2029, a categorical exemption from environmental assessment requirements must be considered inapplicable here.**

- c. The impacts of holding over or renewing the RPs must be evaluated against the no-action alternative, not the status quo as suggested in the exemption notification.

Third, OHA emphasizes that any assessment of the potential effects or impacts of the contemplated holdover or renewal of the subject RPs – whether as a discrete action, or, more appropriately, as one of a series of actions over time – must be based on the “no action” alternative of not holding over or renewing the RPs. The submittal's exemption notification fails to take this approach, and instead ignores the historical and ongoing impacts of the East Maui stream diversions that would be continued by the proposed holdover of the East Maui RPs.

The submittal's exemption notification, to support its claim that there would be no significant impact from the proposed RP renewal or holdover, states that “this action applies only to pre-existing diversions, and will not serve to authorize any new diversions of water beyond that currently occurring.”<sup>6</sup> **In addition to being explicitly inaccurate – the submittal would allow for the diversion of 45 mgd, or twice the amount of water diversion “currently occurring” – this statement suggests that any future impacts resulting from East Maui stream diversions should ignore the unquestionably significant and profound impacts arising from the century-long dewatering of East Maui's streams, which would be continued and compounded by the holdover or renewal of the East Maui RPs.** Such a characterization cannot be considered a reasonable interpretation of our environmental review laws.

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system is necessary to preserve the operational integrity of the ditch system, which will in turn allow for the expansion of Mahi Pono's diversified agriculture operations.”).

<sup>6</sup> See Submittal Exemption Notification.

The diversion of streams throughout East Maui has, for over a century, disrupted ecological and hydrological cycles, altered native habitat, and displaced communities reliant upon fresh and abundant water flow for their cultural, subsistence, and socioeconomic needs. Such diversions have never been assessed for their environmental impacts, and have continued even after an environmental assessment was ordered by the circuit court, over 15 years ago. **These ongoing diversions have only been able to continue due to affirmative and repeated state actions that each, as an action involving the use of state lands, should have triggered our environmental review laws, and resulted in an environmental assessment.**<sup>7</sup> To now apply our environmental review laws in a manner that ignores the historical and ongoing impacts of past actions that should have, but have not, undergone environmental review – and to instead treat these impacts as “currently occurring” conditions not meriting review or assessment – would be to undermine the very purpose and function of our environmental review law.

Notably, even the permittee has acknowledged the need to assess the “cumulative impact” of both past and future actions under the environmental review law, stating, in its Environmental Impact Statement Preparation Notice for a long-term water lease, that “[c]umulative impacts refer to the impact on the environment which results from the incremental impact of an action when added to other past, present, and reasonably foreseeable future actions regardless of what agency, or person undertakes such other actions. Cumulative impacts can result from individually minor, but collectively significant impacts taking place over a period of time” (emphasis added).<sup>8</sup>

**Accordingly, OHA urges the Board to ensure that any assessment of the environmental impacts of holding over or renewing the East Maui RPs be made against the “no action alternative” of not holding over or renewing these RPs.** Such an approach would ensure that an assessment of continuing stream diversions will appropriately incorporate both the historical impacts that these stream diversions have had, as well as the future impacts that may occur should such diversions be allowed to continue. **Such an approach would also avoid the absurd treatment of the triggering action itself – the continuation of the East Maui RPs – as the de facto, “no action alternative.”**

Taking such an approach would again counsel against the application of a categorical exemption, as proposed in the submittal.

- d. The exemption notification failed to obtain the advice of OHA as an “agenc[y] having . . . expertise on the propriety of the exemption,” or of any other agency or entity

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<sup>7</sup> HRS § 343-5(a)(1).

<sup>8</sup> See Environmental Impact Statement Preparation Notice (EISP) for the Proposed “Lease (Water Lease) for the Nāhiku, Ke‘ānae, Honomanū, and Huelo License Areas” being proposed by Alexander & Baldwin Inc. and East Maui Irrigation Company, Limited, situated at TMK Nos. (2) 1-2-004:005, 007 (por.), 1-1-001:044, 1-1050, 2-9-014:001, 005, 011, 012, 017 in the Makawao and Hāna Districts, on the island of Maui, 3-19.

with jurisdiction or expertise in the range of effects or impacts potentially presented by the continuation of the East Maui RPs.

Finally, OHA notes that there was no apparent consultation with OHA or any other agency or individual with “jurisdiction or expertise on the propriety of the exemption,” as it may relate to the East Maui RPs, and the wide range of their probable effects.<sup>9</sup>

As described above, the application of a categorical exemption from environmental assessment requirements generally requires an analysis of the proposed action’s potential effects or impacts.<sup>10</sup> Importantly, as defined in HAR § 13-200.1-2, “[e]ffects’ or ‘impacts’ . . . are synonymous [and] . . . include ecological effects . . . aesthetic effects, historic effects, cultural effects, economic effects, social effects, or health effects, whether primary, secondary, or cumulative, whether immediate or delayed” (emphasis added). In analyzing whether such potential effects or impacts are minimal enough for a categorical exemption to be applicable, an agency also “shall obtain the advice of other outside agencies or individuals having jurisdiction or expertise on the propriety of the exemption” (emphasis added), and document such consultation in its exemption notification.<sup>11</sup>

While the exemption notification here does indicate that consultation took place with the Commission on Water Resource Management (CWRM), the Division of Forestry and Wildlife, and the Division of Aquatic Resources (DAR), **none of these consulted agencies appear to have specific “jurisdiction or expertise” over the totality of potential historic, cultural, economic, social, or health effects of the proposed continuation of the East Maui RPs, which may be particularly salient for the Native Hawaiian practitioners and community members known to reside in this region.** OHA was notably not consulted in the propriety of the proposed exemption, despite its statutory responsibility to “assess[] the policies and practices of other agencies impacting on native Hawaiians and Hawaiians,”<sup>12</sup> as well as its routine review of environmental review and historic preservation review documents; its decades-long history of advocacy for Native Hawaiian traditional and customary practices; its extensive research on Native Hawaiian health and socioeconomic issues; and its specific involvement – including through the consistent submission of testimony on Board agenda items and environmental

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<sup>9</sup> “To declare an exemption prior to implementing an action, an agency shall undertake an analysis to determine whether the action merits exemption pursuant to section 11- 200.1-15 and is consistent with one or several of the general types listed in section 11-200.1-15 or the agency’s exemption list produced in accordance with section 11-200.1-16, and whether significant cumulative impacts or particularly sensitive environments would make the exemption inapplicable. An agency shall obtain the advice of other outside agencies or individuals having jurisdiction or expertise on the propriety of the exemption. This analysis and consultation shall be documented in an exemption notice.” HAR § 11-200.1-17(b) (emphasis added).

<sup>10</sup> *See id.*

<sup>11</sup> *Id.*

<sup>12</sup> HRS § 10-3(4).

review documents – in East Maui stream diversion issues, as well as numerous other water disposition matters on Maui and throughout the islands.<sup>13</sup>

While OHA may not be the only agency or entity with “jurisdiction or expertise” in the range of potential effects or impacts of the proposed holdover or renewal of the East Maui RPs, it is unclear why it was not an obvious choice for consultation, given the agency’s longstanding and comprehensive activities as described above. **In any case, there appears to have been no consultation with any agency or individual with respect to the totality of the direct, secondary, and cumulative historic, cultural, economic, social, and health effects that the diversion of East Maui streams have had, and may continue to have, on the well-recognized Native Hawaiian kīpuka communities of East Maui.** Insofar as “an agency shall obtain the advice of other outside agencies or individuals having jurisdiction or expertise on the propriety of the exemption” (emphasis added), with such “consultation . . . documented in an exemption notice,”<sup>14</sup> the failure to conduct any such consultation with OHA or similar entity, or to reflect such consultation in the written exemption notice contained in the submittal, can only lead to the conclusion that the proposed categorical exemption cannot be properly applied as currently submitted.

**2. The submittal recommendations fail to ensure that the renewal or “holdover” of the East Maui RPs is consistent with the public trust doctrine.**

As noted above, OHA does appreciate the additional thought given to public trust doctrine considerations in the submittal’s discussion. **However, OHA notes that, despite the added discussion, little substantive conditions to uphold the public trust are proposed in the submittal’s recommendation to the Board, which would again fail to ensure that these RPs are consistent with the basic requirements of the public trust.** OHA accordingly urges the Board to defer any consideration of this matter until the concerns described below are more fully considered and appropriately addressed.

- a. The amount of water allowed to be diverted under these RPs should be based on actual demonstrated needs, and a determination that such needs justify any impacts to public trust purposes and competing reasonable-beneficial uses.

First, as OHA has noted for the past four years, and as the Hawai’i Supreme Court has made clear for decades, the public trust doctrine requires that the private diversion of streams be based on the diverter’s demonstrated, actual needs, and that there be a further demonstration of “the propriety of draining water from public streams to satisfy those

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<sup>13</sup> The Department of Hawaiian Home Lands was also notably omitted in the exemption’s consultation list, despite the department’s contemplated water reservations for department-owned lands in Kēōkea, Waiohuli, and Pūlehunui, and the impacts that continued water diversions may have on the ability of its future homesteaders to cultivate and subsist off of these lands and adjoining areas.

<sup>14</sup> HAR § 11-200.1-17(b)

needs.”<sup>15</sup> Unfortunately, this requirement is not reflected in the submittal or its recommendations.

OHA does appreciate that, for the first time, the submittal’s discussion on the renewal or holdover of the East Maui RPs does in fact recognize that the permittee’s actual needs must be accounted for, beyond the generic description provided in the “farm plan” it has put forward:

The farm plan provided by permittee does provide an estimate of the acreage dedicated to certain types of crops, but does not specify the crops nor provide any estimates on how much the water is needed for the various types of crops intended to be planted. Furthermore, the farm plan does provide projections for estimated future water needs, but does not provide any justification for those estimates, such as a timeline for crop plantings.

(emphases added).<sup>16</sup>

As the submittal itself notes, the permittee here has, once again, not provided a meaningful accounting of its actual projected need for water for the next year’s “holdover” period – the first step in the basic public trust analysis articulated repeatedly by the Hawai’i Supreme Court. To correct this deficiency, the submittal discussion does suggest that “Permittee further report how much water is needed for each crop per acre[.]” **However, despite its recognition that the permittee has failed to demonstrate its actual, quantified need for diverted water over the next year – much less how this need would justify the draining of public streams – the submittal nonetheless recommends that the permittee continue to be allowed to divert up to 45 mgd from East Maui, with no other condition or requirement to otherwise avoid undue impacts to diverted streams.**

**Without an accounting of the permittee’s actual need for water, there can be no meaningful balancing of the permittee’s need with potential and projected impacts on the public trust purposes and instream reasonable beneficial uses of East Maui’s streams.** Accordingly, OHA urges the Board to defer its decisionmaking on these RPs, until the permittee first provides the critical and long-awaited information necessary to uphold its duties under the public trust.

- b. The submittal recommendation provides no meaningful protection of public trust purposes served by the East Maui streams not subject to the updated interim instream flow standards set by CWRM.

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<sup>15</sup> In re Water Use Permit Applications (Waiāhole I), 94 Hawai’i 97(2000).

<sup>16</sup> Submittal at 13. The “farm plan” alluded to also only provides a general vision of Mahi Pono’s agricultural activities at full build out, i.e. 10 years in the future. It provides no indication of what crops will be planted during the holdover/renewal period for the next year, which should be a fundamental consideration in establishing a maximum diversion rate for the East Maui RPs over this time.

Second, OHA notes that the submittal's recommendations would similarly abdicate the Board's responsibility to provide any reasonable protection of the public trust purposes and instream reasonable beneficial uses of East Maui's streams, particularly with respect to those streams not subject to the updated interim instream flow standards set by CWRM.

OHA acknowledges and appreciates the discussion contained in the submittal, regarding the critical ecological services and subsistence and cultural resources provided by these latter streams. However, the submittal's recommended Board motion provides little to no assurance that these and other public trust purposes and instream reasonable-beneficial uses will be meaningfully or reasonably protected from the stream diversions in the "holdover" of the East Maui RPs. The submittal's one relevant recommended condition – that the "permittee shall cooperate with CWRM and DAR in studies, site inspections, and other actions as necessary to address the streams in the license areas not covered by the CWRM order" – does little to ensure that any studies or site inspections, much less meaningful actions, will actually be undertaken or required by CWRM or DAR at any point during the next year. **Accordingly, the submittal's recommendation provides no concrete or meaningful protection of the public trust in these particular streams, and absent CWRM or DAR action, would instead allow them to be completely and arbitrarily diverted for the unspecified, unverified needs of the permittee.**

In light of its constitutional and public trust responsibilities, OHA this year again urges the Board to take further and much more proactive action in the protection of all streams that may be impacted by the continuation of the East Maui RPs. **This includes, again, the Board's further investigation of the public trust purposes and instream reasonable-beneficial uses of those streams not covered under the updated interim instream flow standards set by the CWRM, and the balancing of these purposes and uses with the permittee's actual water needs; in addition, OHA recommends, minimally, conditions that would require the installation of gauges for each of the diverted streams, with real-time publicly available monitoring data, that would facilitate further conditions ensuring the continued maintenance of mauka-to-makai stream flow and any updated interim instream flow standards, as well as other protective measures that may arise out of the Board's investigations.**

- c. The submittal recommendation provides no meaningful assurance that diverted water will be used for reasonable-beneficial uses.

Third, while OHA appreciates the submittal's expressed desire to require the permittee to "prove . . . the reasonable-beneficial use of all water diverted"<sup>17</sup> – as would be consistent with the public trust doctrine and the most recent conditions placed on the East Maui RPs – the submittal's recommendations fail to meaningfully ensure that this basic requirement will be met, and in a timely manner.

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<sup>17</sup> Submittal at 10.

For example, the submittal acknowledges that “reported historical and industrial uses [of diverted stream water] may not be consistent with the Board’s requirements . . . that all diverted water shall be put to beneficial agricultural or municipal use.”<sup>18</sup> The submittal further notes that the permittee has not required such uses to be metered, and that it did “not specify the exact nature of the water use and the amount of water used” in these questionable cases. **The submittal’s discussion does suggest that the Board “require the Permittee to provide more information on the nonagricultural historical and industrial uses, identifying the specific uses of water . . . and the amount used”; however, the submittal’s recommended conditions fail to actually impose any such requirement on the permittee.** Given the questionable and unverifiable use of water described in the submittal, and in light of the significant historical and potential future impacts that stream diversions have had and continue to have on the communities and ecosystems of East Maui, **any renewal or holdover of the East Maui RPs should minimally include conditions requiring the provision of information on all end uses of water, as well as the installation of water meters, the provision of estimated water duties or usage rates, and opportunities for site inspections to verify the actual claimed uses of water.**

In addition, the submittal acknowledges the substantial waste that is occurring in the form of “system losses,” which CWRM explicitly found “do not reflect best practices, will not serve the interests of future generations and are not acceptable.” However, while noting that CWRM has urged the Board to consider “requiring improvements of delivery systems to minimize leakage and waste, as well as to provide accurate and timely gauging and monitoring of all offstream water uses,” the submittal only includes a recommended condition to require the submission of “a plan for proposed upgrades, including an implementation timeline, to the irrigation system . . . no later than June 30, 2021.”

Despite the clear concerns regarding substantial water waste, this recommended condition fails to provide any mechanism to ensure that the proposed plan and timeline will actually be sufficient, and, at best, would only provide the permittee an opportunity to further delay diversion system upgrades that have been requested, and deferred, for decades. This recommended condition also neglects to address the second part of the noted CWRM request (also made by OHA and others repeatedly over the last four years) to require accurate and timely gauging and monitoring of all offstream water uses, such as through the installation of water meters to measure both the amount of water diverted, and the amount of water consumed by each end user. Again, such a requirement may be critical to ensuring that diverted water is actually used for reasonable beneficial uses, and not wasted via avoidable system losses.

Accordingly, OHA urges the Board to include, in any renewal or holdover of the subject RPs, the following as additional conditions:

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<sup>18</sup> Submittal at 13.

- The installation by applicants of water gauges that can provide publicly-accessible real-time data for every stream to be diverted,<sup>19</sup> including the amount of water diverted from each stream and in total;

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

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

- Performance bonds for the failure to install water gauges and meters and take other required actions within a timely manner; and

- To incentivize timely and meaningful system upgrades, a premium rate or penalty for quantities of diverted water lost in transmission and storage, when system loss rates exceed certain benchmarks over time.

d. The submittal's recommendation inexplicably and inappropriately condones water waste as a permissible use of water.

Finally, and in relation to the discussion above, OHA urges the Board to reject the inexplicable submittal recommendation that “[s]ystem losses and evaporation shall not be considered a waste of water.” **Such a blanket recommendation would essentially reward the permittee for its decades-long and ongoing failure to implement much-needed upgrades to its antiquated diversion and water storage infrastructure; treat the seepage of millions of gallons of water per day into the ground as an acceptable “use” of water; and thereby set a precedent that would undermine both of the state’s “dual mandates” to ensure the protection of its public trust water resources, and maximize their beneficial use.**

While the basis for this recommendation is not clear, the discussion in the submittal appears to suggest that it is based on the permittee’s assertion that some proportion of its system and evaporation losses is due to the Maui Fire Department’s alleged request to maintain water in certain unspecified reservoirs, and that seepage losses from unlined reservoirs “is not being irretrievably ‘lost,’ or not ‘lost’ at all, since it is being returned to the underlying aquifer.”<sup>20</sup> Even if the submittal’s recommendation was limited to exclude only these specific categories of losses, rather than all system and evaporation losses, from being considered “waste” – which is not the case – it cannot be considered justified based on the information provided in the submittal.

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<sup>19</sup> Real-time measuring gauges have already been used in Nā Wai ʻĒhā, 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.

<sup>20</sup> Submittal at 12.

First, nothing indicates that the Maui Fire Department's alluded-to request would require that reservoirs allegedly needed for fire suppression remain unlined, such that their maintenance would require the continued diversion of millions of gallons of water per day from East Maui's streams. In other words, nothing in the Maui Fire Department's request would require that millions of gallons of water be allowed to seep out of the reservoirs it wants maintained.

Second, it is unclear how many reservoirs in question are in locations where there are no other alternative surface, ocean, or other water sources, such that they may be actually needed for fire suppression purposes. Notably, the Lahaina Wastewater Reclamation Facility produces from 3 to 5 million gallons of treated wastewater per day, which it injects into Ka'anapali's nearshore waters via groundwater injection wells;<sup>21</sup> the Wailuku Kahului Wastewater Reclamation Facility likewise produces approximately 4 million of gallons of treated wastewater per day, also injected into Kahului Bay via groundwater injection wells.<sup>22</sup> It is not clear why the water produced by these facilities, or water available from other sources, cannot be accessed or used for fire suppression purposes, as an alternative to diverting millions of gallons of water a day from East Maui's streams.

Third, the maintenance of reservoirs claimed to be necessary for fire suppression may in fact create a potential public safety hazard, **both due to fact that "virtually every one of Hawai'i's 130 state-regulated dams are considered high hazard,"<sup>23</sup> and that the impairment of native watersheds from water diversions<sup>24</sup> may in fact increase the risk of fires and other climate change-associated threats.<sup>25</sup>**

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<sup>21</sup> *US Supreme Court Grants Petition in West Maui Injection Well Case*, MAUI NEWS, February 20, 2019.

<sup>22</sup> MANA, Final Environmental Impact Statement: Renewable Energy Conversion and Sludge Processing for the Wailuku-Kahului Wastewater Reclamation Facility (2018), *available at* [http://oeqc2.doh.hawaii.gov/EA\\_EIS\\_Library/2018-03-23-MA-FEIS-Renewable-Energy-Conversion-and-Sludge-Processing-at-the-Wailuku-Kahului-Wastewater-Reclamation-Facility.pdf](http://oeqc2.doh.hawaii.gov/EA_EIS_Library/2018-03-23-MA-FEIS-Renewable-Energy-Conversion-and-Sludge-Processing-at-the-Wailuku-Kahului-Wastewater-Reclamation-Facility.pdf).

<sup>23</sup> Caleb Jones, *Hawaii Officials Struggle to Keep Dams Safe*, U.S. NEWS, Nov. 10, 2019.

<sup>24</sup> See HAWAII COMPREHENSIVE WILDLIFE CONSERVATION STRATEGY 4-2 (2005) ("...Alteration of hydrology, which includes watershed development, stream diversions, channelizations, and excessive water withdrawals that lower the aquifer, degrades or destroys habitat used by native fishes and invertebrates. Such activities indirectly affect terrestrial wildlife where these changes alter plant communities or the availability of drinking water.")

<sup>25</sup> See HAWAII STATE DASHBOARD, *supra*. ("For example, widespread strawberry guava demands 27% - 53% times more water than native forests, causing extensive water loss across landscapes. In East Hawaii [sic], invasive plants have reduced estimated groundwater recharge by 85 million gallons per day. . . . Native Hawaiian plants are not adapted to wildfire, and after they are burned they are typically replaced by weeds that are more prone to re-burn. This creates a cycle of wildfires."); Hawaii Freshwater Initiative, *A Blueprint for Action: Water Security for an Uncertain Future* 13 ("...[W]ater loss via evapotranspiration may rise with the continued invasion of non-native plants."); DEPARTMENT OF LAND AND NATURAL RESOURCES, *THE RAIN FOLLOWS THE FOREST: HAHAI NO KA UA I KA ULULĀ'AU* 3 (2011); UNITED STATES DEPARTMENT OF DEFENSE, *INVASIVE SPECIES CHALLENGES AND SOLUTIONS* 7 (2017) ("Invasive plants . . . can make ecosystems more susceptible to wildfire. . . . For example, fountain grass is a fire-promoting invasive species that has made its way into formerly forested landscapes on the island of Hawai'i. . . This invasive grass species has increased the frequency and size of wildfires on the [Pōhakuloa] training area."); Clay Trauernicht, et. al., *The Contemporary Scale and Context of Wildfire in Hawai'i*, 69 PACIFIC SCIENCE 427, 427-28 (2015) ("These

Finally, the permittee's premise that water loss due to seepage from unlined reservoirs should be considered "not 'lost' at all" flies in the face of the public trust doctrine, and the public trust purposes and beneficial uses of water the doctrine prioritizes. The historical loss of **20-30 mgd or more** from HC&S's reservoirs, and reported **loss rates of up to 8 mgd from a single reservoir in Central Maui**,<sup>26</sup> underscore the substantial and continuous impacts to riparian and nearshore flora and fauna, subsistence and cultural practices, and other priority purposes and uses that may result from the diversion of streams, simply to maintain water levels in unlined reservoirs. The fact that seeping reservoir water may (or may not) be one day reclaimed by the diverter cannot negate the fact that public trust purposes and reasonable beneficial uses have been and will continue be significantly and immediately foreclosed.

Accordingly, OHA urges the Board to reject any recommendation that the loss of public trust water due to a diverter's ongoing and longstanding refusal to address avoidable system losses should be considered anything but "waste."

### 3. Conclusion

In conclusion, OHA respectfully urges the Board to 1) **reject** the proposed categorical exemption for the continued holdover or renewal of the subject East Maui RPs and 2) **defer** any decision-making on this matter, until adequate information has been provided to allow the Board to uphold its public trust responsibilities, and the public trust concerns described above have been appropriately addressed.

Mahalo nui for the opportunity to comment on this matter.

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nonnative species regularly encroach into Hawai'i's native ecosystems . . . where they suppress native plant regeneration, increase ecosystem flammability and fire frequency, and accelerate rates of habitat loss.").

<sup>26</sup> See, e.g., Staff Submittal, Agenda Item C-1, Commission on Water Resource Management, May 25, 2010 ("Of these 36 reservoirs, 31 are unlined. HC&S was unable to provide current studies documenting system loss from the reservoirs. However, they did provide data from seepage runs conducted in the 1960s which estimated loss at **23 to 31 [million gallons per day]**" (emphasis added)); Colleen Uechi, *Hui files complaint over water levels from Waihee River*, Maui News, Sept. 25, 2019, <https://www.mauinews.com/news/local-news/2019/09/hui-files-complaint-over-water-levels-from-waihee-river/> ("...Waiale Reservoir can lose 6 to 8 [million gallons per day], which HC&S was candid about.").



November 10, 2020

**STATE OF HAWAII BOARD OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

Re: **D-8** Holdover/Continuation 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

Members of the Board of Land and Natural Resources:

My name is Nelson Okumura, President and CEO of Valley Isle Produce Inc. dba VIP Foodservice and Island Grocery Depot stores. I am also the past President of the Maui Chamber of Commerce. I strongly support the continuation of the East Maui Revocable and Holdover permits.

Our Valley Isle Produce operations work very closely with farmers on Maui, especially Upcountry Maui. During this Covid pandemic, my association with the farmers has increased as we assist with the County CARES produce purchase program. The importance of locally grown products has been reemphasized. Most of these farmers rely on waters from East Maui making these permits critical to their operations.

As President of Chamber of Commerce, I saw the value of collaboration among businesses. Locally grown agricultural products are used by entrepreneurs to produce value added products. The value of these products is further enhanced with the "Made in Maui" brand. As we regrow Maui's economy these opportunities are important. It is a chance to diversify our economy. However, without water these opportunities may be lost. Most of these operations are family businesses employing a few workers. Communities will be affected.

Renewal of these permits is crucial to Maui's economy and well-being and I humbly ask for your support.

Thank you for your consideration.

Yours truly,

Nelson T. Okumura  
President

Testimony before the Board of Land and Natural Resources, Commission on Water Resource Management

Attention: Chairperson Suzanne D. Case

Friday, November 13, 2020

**Relating to Annual Continuation of Revocable Permits to Alexander and Baldwin, Inc. and East Maui Irrigation Company., Limited, for water use on Maui**

I am Robert Osgood testifying as a private citizen in support of the continuation of the revocable permits which allow the distribution of water on Maui

I am currently working as an agricultural consultant and have previously worked as a researcher in Hawaii for 50 years on crops including sugarcane, coffee, and a wide range of diversified crops. At the Hawaiian Sugar Planters' Association and its successor, Hawaii Agriculture Research Center I was responsible for proposing and testing crops suitable for conversion of lands in sugarcane to diversified crops.

Water availability and cost of water were always among the prime factors when considering any new crop for the lands coming out of sugarcane. Without an assured water supply it will not be possible to produce crops for consumption and export. This is especially true for Maui where diversified agriculture is proposed for the hot, dry central valley previously occupied by sugarcane.

Sugarcane was is a high-water consumption crop but could withstand periods of drought and still produce high yield over its 2-year growth cycle. This was the advantage that sugarcane had over other crops. It was a forgiving crop able to wait for water when it became available. Crops currently being proposed for central Maui may require even more water than sugarcane during their shorter growing season, and most importantly these crops cannot go without water for even short periods without major losses in yield and quality. In other words, the water supply must be consistent and reliable and designed for maximum water use.

We noted on Oahu following the shutdown of Oahu Sugar Co. a significant increase in the evaporation of water from our measuring instruments at the HARC, Kunia research station. This was due to interruption of the cooling effect of the extensive sugarcane canopy. The same is expected for Maui resulting in warmer temperatures. Its likely that the record high temperatures experienced on Maui following the closure of HC&S are at least partially the result of the lack of a sugarcane canopy which was the result of irrigation water delivered from East Maui.

Without adequate and reliable water delivery, agriculture will fail in central Maui and the land will revert to a dusty plain supporting only drought resistant weeds and resulting in higher temperatures and a large increase in atmospheric dust.

I urge the Board of Land and Natural Resources to approve the holdover of the revocable water permits.

Robert Osgood, PHD

BOARD OF LAND AND NATURAL RESOURCES

NOVEMBER 13, 2020

9:00 A.M.

Online via ZOOM, Livestream via YouTube

[blnr.testimony@hawaii.gov](mailto:blnr.testimony@hawaii.gov).

TESTIMONY

Re: **D-8** Holdover/Continuation 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

Members of the Board of Land and Natural Resources:

My name is Ken Ota, President of Pacific Pipe on Maui. I respectfully request your support in passing this measure. Our company provides water infrastructure services for the people of Maui. I have worked with both residences and agriculture businesses in Upcountry and see efforts underway to increase water efficiency. I also know that efficiencies can only go so far. There is a minimum amount of water needed to grow crops.

I often hear people say just grow crops that do not need so much water. Unfortunately, this is not realistic. Local produce like lettuce, cucumbers, tomatoes, and local fruits, require a reliable and affordable water source. I can help the growers use water in the most efficient way but if water is not available during key times of the crop, there will be no crop, no harvest, no local produce. Less and non-reliable water access is counter to the need for local self-sufficiency, especially in these post COVID days.

I will continue to help residents and farmers water efficiency, but this measure is critical for our local food industry to survive. This measure is critical to feed our families with produce grown on the island. I respectfully request your support of this measure. Thank you.

Ken Ota



Pacific Pipe Co.

BOARD OF LAND AND NATURAL RESOURCES

NOVEMBER 13, 2020

9:00 A.M.

Online via ZOOM, Livestream via YouTube

[blnr.testimony@hawaii.gov](mailto:blnr.testimony@hawaii.gov).

TESTIMONY

Re: **D-8** Holdover/Continuation 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

Members of the Board of Land and Natural Resources:

My name is Bryan Otani, an Upcountry produce grower. I strongly support the renewal of these permits.

I am a Fourth generation farmers in Kula, currently growing specialty carrots, Kula onion, broccoli, beans and daikon. Kula lands are fertile and the climate ideal for growing many vegetables. Crops such as cabbage and lettuce, like Kula onion, have excellent flavors due to our cool climate and rich volcanic soils. But we also know what it is like to not have water. Until some of the water tanks were installed by the County, there were times without water during my childhood days. I hope those days do not return but I am worried due to the frequency and seriousness of the droughts. I also see new homes being built .. many had meters approved long ago and are now just building but it does increase the total water use.

I don't want to be the generation that ends our family farm. We need these permits. Please approve these permits so we can continue to farm.

Thank you.

Bryan Otani

# TESTIMONY

November 11, 2020

**BOARD OF LAND AND NATURAL RESOURCES**

State of Hawaii  
1151 Punchbowl Street  
Honolulu, Hawaii 96813

[blnr.testimony@hawaii.gov](mailto:blnr.testimony@hawaii.gov)

November 13, 2020 at 9:00 AM

(Online via ZOOM, Livestream via YouTube)

**RE: D-8 Holdover/Continuation 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**

Dear Members of the Board of Land and Natural Resources,

‘O Barbara J. L. Purdy ko’u inoa no Wai’ohuli ma Maui mai au (I currently reside in Wai’ohuli, Maui) and I am in support of the renewal revocable permits and its permit holders.

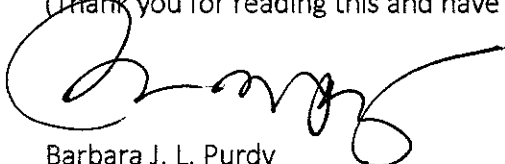
Why I am in support for the renewal of the above revocable permits? This claim is because I rely on the resource (pumping of water) to move in the direction of our greater UpCountry community especially our home which we maintain sterilization with medical equipment on a daily basis.

Secondly, I rely on the resource (pumping of water) to our home for domestic use such as drinking, laundry, showering, raising animals and agricultural plantings (sustainability).

Finally, I rely heavily on the resource once again (pumping of water) to our local ranches, farmers, schools, agricultural nurseries to cultivate and in return provide products back to our community.

More than ever, the revocable permits and its holders play a vital role in getting water to our UpCountry homes, businesses, farms, schools and ranches especially during this pandemic in hopes that we can continue to have access to water as we all are beneficiaries. Your support to keep pathways open for this revocable permit and its holders is greatly appreciated.

Mahalo I ka heluhelu ana keia a i la maika’i,  
(Thank you for reading this and have a good day)



Barbara J. L. Purdy  
Resident of Wai’ohuli, Maui, Hawai’i



# SIERRA CLUB OF HAWAI'I

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Testimony to the  
BOARD OF LAND AND NATURAL RESOURCES  
November 13, 2020

**Agenda Item: D-8: Relating to Continuance of Revocable Permits for the diversion  
of East Maui Streams by Alexander & Baldwin and Mahi Pono**

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

On behalf of our 28,000 members and supporters, the Sierra Club takes issue with the staff's recommendation on the 2021 renewal of revocable permits to East Maui Irrigation (jointly owned by Alexander & Baldwin and Mahi Pono) for the diversion of east Maui streams.

The primary issue before you is whether you should allow Alexander & Baldwin, Mahi Pono, and East Maui Irrigation (collectively "A&B" herein) to drain 13 east Maui streams dry when most of that water is lost – or **wasted**. There are reasonable measures that can be implemented to keep more water in our streams, which you should be requiring as stewards – or trustees – of the public's natural resources.

If you carefully look at the quarterly reports that have been submitted to you, it is easy to see that very little of the water taken out of east Maui streams is actually used.

Quarter	Average taken from East Maui streams (mgd)	Maui County domestic use (mgd)	Kula Ag Park uses (mgd)	Diversified ag uses (Mid)	<b>Unaccounted for water – seepage from unlined reservoirs &amp; evaporation (dust control is minuscule)</b>
Q1	27.79	1.06	.38	2.5	<b>22.75</b>
Q2	22.6	1.8	.41	3.64	<b>15.64</b>
Q3	18.9	3	.5	2.5	<b>11.7</b>

The water that is lost – wasted – should stay in our streams. Why should our streams be drained dry when most of that water is lost? There is a better way. Herein you will find a summary of recommendations for improving the staff submittal followed up an in-depth analysis and explanation to justify our detailed recommendations to the Board of Land and Natural Resources.

## SUMMARY OF RECOMMENDATIONS

After receiving all required information, the following changes must be made to the proposed revocable permits if any are issued:

1. Permittee shall cooperate with CWRM and DAR in studies, site inspections and other actions as necessary to address the streams in the license areas not covered by the CWRM order.
2. Permittee shall work with CWRM and DOFAW to ~~determine whether there are alternatives to diversion removal that effectively prevent~~ remove diversion structures that foster mosquito breeding and can be feasibly implemented. Permittee shall include the ~~status of alternatives~~ in their quarterly reports.
3. If the Board or Department finds that a use of water is not reasonable and beneficial and does not comply with the permitted uses, Permittee shall cease such use within a timeframe as determined by the Department. The permittee shall immediately cease using, or allowing the use of, water for industrial purposes.
4. For water used for agricultural crops, Permittee are to estimate how much water is required for each crop per acre per day, and how many acres of each crop are being cultivated. The Permittee shall provide updated information in each quarterly report.
5. Permittee shall submit to the Department a plan for their proposed upgrades, including an implementation timeline, to the irrigation system intended to address CWRM's concerns no later than ~~June~~ March 30, 2021. By November 1, 2021, it shall complete the lining and covering of six reservoirs.
6. Permittee shall pay the 2021 monthly rent amounts as determined above.
7. "Trash and debris" shall be further defined as "any loose or dislodged diversion material such as concrete, rebar, steel grating, corrugated metals, railroad ties, unused pipes etc., that can be removed by hand (or by light equipment that can access the stream as is)."
8. ~~System losses and evaporation shall not be considered as a waste of water.~~
8. In its quarterly reports, the Permittee shall disclose how much water came from streams west of Honopou on average per day.
9. The Permittee shall ensure that between 3 and 17 million gallons of groundwater are pumped and used per day in conjunction with the use of east Maui water. If the

Board, Department or Commission on Water Resource Management determines that pumpage of that quantity of water is not sustainable, it shall reduce its pumpage accordingly. In its quarterly reports, the Permittee shall disclose how much groundwater was pumped on average per day.

10. The Permittee shall not divert more than 27 million gallons of water per day, as measured at Honopou for all permits combined. All diverted water shall be for reasonable and beneficial uses.

11. The Permittee shall leave 64% of the baseflow -- the minimum amount of baseflow that native species require to grow and reproduce -- in all 13 streams which CWRM did not address.

12. By March 30, 2012, the Permittee shall submit stream alteration permits to CWRM to modify the diversion structures on Puohokamoa, Waiohue and Hanawi streams identified in the April 1, 2010 Division of Aquatic Resources letter.

13. By November 1, 2020, the Permittee shall prepare an assessment of each diversion structure on state land to determine the degree to which each one: (a) interferes with native aquatic species (blocking migration upstream as well as entraining larvae); (b) facilitates mosquito breeding; or (c) mars natural beauty.

14. The Permittee shall deposit \$500,000 into the forest stewardship fund, HRS § 195F-4, for the control of invasive species in the east Maui watershed, or contribute \$500,000 to the East Maui Watershed Partnership to hire additional staff members to reduce the spread of invasive species within the revocable permit area.

15. The Permittee shall increase its staffing to prioritize the removal of trash and other debris (including unused pipes). It shall disclose changes in staffing levels in its quarterly reports.

## **ANALYSIS & EXPLANATION**

### **I. BLNR Should Reject the Staff's Proposal to Change the Definition of Waste**

The staff suggests that this board employ Orwellian – or Trumpian – logic to redefine “waste.” To suggest that system losses and evaporation – **of unlimited quantities** – is not waste is absurd on its face and inconsistent with the manner in which Suzanne Case and Mahi Pono have used that term and inconsistent with rulings of the Hawai‘i Supreme Court.

When this board considered renewal of the various water permits on October 11, 2019, Chair

Case said, “And, you know, I mean, the other consideration, obviously, is **waste, you don't want to be running water through the system that's not being used** and not being used to - but I do -- and we've had, you know, discussions with the delegation about this.” When Mahi Pono entered into a settlement with the Office of Hawaiian Affairs, Maui Tomorrow and Hui O Nā Wai ‘Ehā in November 2019, it agreed that:

Mahi Pono will bypass the Wai‘ale Reservoir to avoid the **reservoir’s significant seepage losses** of 6 to 8 mgd. In implementing the Commission’s 2014 Order adopting the settlement in Case No. MA 06-01 (remand), HC&S had opted to bypass the Wai‘ale Reservoir **to avoid such waste**. Mahi Pono will adopt and implement this bypass solution and will use Wai‘ale Reservoir only for flood control purposes for the surrounding Wailuku community. Mahi Pono will replace some of the storage capacity of the Wai‘ale Reservoir with other reservoir(s) on its farm, which **will be lined to minimize losses**.

In other words, both Mahi Pono and Suzanne Case have equated water that is not used, and water that is lost due to seepage as waste. The Water Commission similarly concluded:

737. Thus, HC&S’s system losses of 22.7 percent (41.67 mgd of 183.61 mgd of surface water delivered and ground water pumped) were reasonable losses under sugarcane cultivation. Because the same distribution system would be used for diversified agriculture, **the same rate of 22.7 percent losses** should be applicable.

Yet, the staff submittal suggests that the BLNR should rubber stamp system losses far greater than 22.7%. There is a better way.

## **II. BLNR Must Take Steps to Reduce Waste Now**

Instead of altering the definition of waste, BLNR should require that A&B reduce its waste. The Supreme Court has mandated that decisions involving the use of stream water “must include provisions that encourage system repairs and limit losses.” *In re Water Use Permit Applications*, 105 Hawai‘i 1, 27, 93 P.3d 643, 669 (2004) (*Waiāhole II*). A&B must prove that its use of water is “reasonable and beneficial.” *Kauai Springs, Inc. v. Planning Comm’n of the Cnty. of Kaua‘i*, 133 Hawai‘i 141, 174-75, 324 P.3d 951, 984-85 (2014). It is per se unreasonable to allow an unlimited amount of water to be lost due to seepage and evaporation. It is particularly unreasonable when the Water Commission ruled that only system losses of 22.7 percent are reasonable. Excessive amounts of system losses are unreasonable. In fact, the Water Commission warned:

although estimates of over 20 percent transmission system losses may comport with current industry standards, they do not reflect best practices, will not serve the interests of future generations and are not acceptable. Modern agribusiness investors should not expect to build a new industry on the back of century-old infrastructure. Investment in

ditch systems must be made to avoid leakage and waste, install modern ground water storage technologies, optimize use of non-potable water, and improve water capture and storage from storm events that increase total flow availability.

Former A&B executive Rick Volner testified under oath at the most recent trial on their diversions from east Maui that almost all of the reservoirs “were in existence from the very beginning of farming operations, so prior to the early 1900s on the HC&S plantation.” These century-old reservoirs must be upgraded now. Submitting a plan in six months is too little, too late. There is no time – or water – to waste. The Water Commission specifically asked this Board to consider requiring improvements “to minimize leakage and waste.” Lining these antiquated, leaky, unlined reservoirs would significantly reduce system losses. And covering them would significantly reduce evaporation.

BLNR has the legal authority pursuant to HRS § 171-58(c) to require that as a condition of taking water in 2021, A&B ensure that a **minimum of six unlined reservoirs be lined and covered in 2021**. More could be done in 2022. A&B and Mahi Pono can fight over who between the two of them has to pay for the lining and covering, but if they are unwilling to line and cover the reservoirs, BLNR should not authorize more than 23 million gallons of water per day to be removed from east Maui streams.

### **III. BLNR Should Require the Use of Alternative Water Sources.**

The Water Commission and A&B have recognized that there are alternative water sources available to irrigate fields in central Maui: groundwater (approximately 17 million gallons per day) and water from streams west of Honopou (approximately 11 million gallons per day). Those water sources should be used to reduce the incredible damage that is being wrought on 13 east Maui streams. Rather than drain streams dry, groundwater can be pumped – and seep back to the ground to replenish the groundwater.

The staff submittal highlights that Mahi Pono used approximately 12.7 million gallons of brackish water – **cumulatively** for the entire quarter (not per day). That translates into .141 million gallons per day – a minuscule amount compared to the amount of water taken out of east Maui streams.

### **IV. BLNR Can Take Steps to Protect these 13 Forgotten Streams.**

The Water Commission’s 2018 order did not consider the ecological or recreational value of 13 streams – because they were not included in the petitions filed by Nā Moku Aupuni O Ko’olau Hui (Nā Moku). A&B’s diversion structures remove all the water from these 13 streams 80% of the time. **They drain these streams dry.** BLNR has authorized A&B to take all the water from these 13 streams without any limitation. A&B’s paid consultant concluded in September 2019 that the full diversion of these streams leads to the loss of 85% of the habitat – more habitat is

lost on these 13 streams than was restored on the nine fully restored streams and more habitat than was restored on the so-called five habitat streams.<sup>1</sup> Taking all the water from a stream 80% of the time has profound ecological consequences. It really is insulting to treat these streams as unimportant. They all have ecological, recreational and community value. BLNR should take steps now to protect these streams that have been neglected for far too long.

For the first time, the board now has the benefit of a Division of Aquatic Resources' analysis of these 13 streams – even though staff only visited six of them. These streams are not unimportant – *as your attorneys attempted to argue in court*. They should not be drained dry when most of their water is not actually used.

Please protect the instream values – such as native aquatic fish, recreational uses and cultural uses – of these streams. The majority of these streams are a water source for residents of the many small communities of east Maui. The Supreme Court has condemned attempts to allow water to be used without any determination of instream flow standards:

The tentative grant of water use permits without any determination of instream flow standards, conversely, presents the least desirable scenario: no assurance that public rights are receiving adequate provision, no genuine comprehensive planning process, and no modicum of certainty for permit applicants and grantees. Cf. *Concerned Citizens of Putnam County for Responsive Gov't v. St. John's River Water Management Dist.*, 622 So.2d 520, 523 (Fla.Ct.App.1993) ("[I]t is difficult . . . to imagine how the water supply can be managed without the establishment of minimums.").

*In Re Water Use Permit Applications*, 94 Hawai'i 97, 149, 9 P.3d 409, 461 (2000) (“*Waiāhole*”). An agency must “take the initiative in planning for the appropriate instream flows before demand for new uses heightens the temptation simply to accept renewed diversions as a foregone conclusion.” *Id.* The court criticized decisions that “could drain a stream dry incrementally, or leave a diverted stream dry in perpetuity, without ever determining the appropriate instream flows. Needless to say, we cannot accept such a proposition.” *Id.* at 158, 9 P.3d at 471. The court criticized a “permissive view towards stream diversions, particularly while the instream flow standards remained in limbo.” *Id.* at 159, 9 P.3d at 472.

In his deposition, Sam Gon III explained BLNR's reasons for refusing to take any steps to protect stream life. He explained that no effort was made “because there were no impacts above and beyond that which occurred for over a century.” He argued that BLNR did not need to address problems that already exist. The Supreme Court has rejected that logic. *Waiāhole*, 94 Hawai'i 97, 149-50, 9 P.3d 409, 461-62.

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<sup>1</sup> Given this devastating impact, the staff submittal's claim on page 27 that the renewal of the revocable permit “will probably have minimal or no significant effect on the environment” is patently wrong. Allowing A&B to continue to use these lands and waters prior to the completion of an EIS violates HRS chapter 343.

The staff submittal gives lip service to the public trust's "dual mandate." Streams must be protected -- particularly if the water taken from them is not being used reasonably. **Mahi Pono's own data reveals that far more than half of the water taken out of these streams is lost.** These losses could easily be reduced.

The staff submittal ignores its duty to protect public trust resources: *State v. Zimring*, 58 Haw. 106, 121, 566 P.2d 725, 735 (1977) ("Under public trust principles, the State as a trustee has the duty to protect and maintain the property and regulate its use."); *Kelly v. 1250 Oceanside Partners*, 111 Hawai'i 205, 226, 140 P.3d 985, 1006 (2006) ("an affirmative duty to preserve and protect the State's water resources"); *Kauai Springs, Inc. v. Planning Comm'n of the Cnty. of Kaua'i*, 133 Hawai'i 141, 172, 324 P.3d 951, 982 (2014) ("The purpose of the state water resource public trust is to protect certain uses."); *Ching v. Case*, 145 Hawai'i 148, 152, 449 P.3d 1146, 1150 (2019) ("an obligation to protect and preserve the resources however they are utilized"). Your deputy attorneys general continue to rely on, emphasize, and seek refuge in the second clause in Article XI § 1. But as the Supreme Court has repeatedly pointed out, the requirement to "promote the development and utilization of these resources" must be done "**in a manner consistent with their conservation** and in furtherance of the self-sufficiency of the State." *Waiāhole*, 94 Hawai'i at 139, 9 P.3d at 451. "[A]rticle XI, section 1's mandate of 'conservation'-minded use recognizes 'protection' as a valid purpose consonant with assuring the 'highest economic and social benefits' of the resource." *Id.* "In short, the object is not maximum consumptive use, but rather the most equitable, reasonable, and beneficial allocation of state water resources, **with full recognition that resource protection also constitutes "use."** *Id.* at 140, 9 P.3d at 452. "[T]he mandate of 'conservation'-minded use subsumed in our state's water resources trust contemplates 'protection' of waters in their natural state as a beneficial use." *Id.*

Having recognized the necessity of a balancing process, we do not suggest that the state's public trust duties amount to nothing more than a restatement of its prerogatives, *see Robinson*, 65 Haw. at 674 n. 31, 658 P.2d at 310 n. 31, nor do we ascribe to the constitutional framers the intent to enact laws devoid of any real substance and effect, *see supra* notes 29, 36 & 40. Rather, we observe that the constitutional requirements of "protection" and "conservation," the historical and continuing understanding of the trust as a guarantee of public rights, and the common reality of the "zero-sum" game between competing water uses demand that any balancing between public and private purposes begin with a presumption in favor of public use, access, and enjoyment. *See, e.g., Zimring*, 58 Haw. at 121, 566 P.2d at 735 ("[T]he State as trustee has the duty to protect and maintain the trust [resource] and regulate its use. Presumptively, this duty is to be implemented by devoting the [resource] to actual public uses, e.g., recreation."). Thus, insofar as the public trust, by nature and definition, establishes use consistent with trust purposes as the norm or "default" condition, we affirm the Commission's conclusion that it effectively prescribes a "higher level of scrutiny" for private commercial uses such as those proposed in this case.

*Id.* at 142, 9 P.3d at 454. Or, as re-articulated by the Court:

The duty to protect includes the duty to "ensure the continued availability and existence

of its water resources for present and future generations." *Id.* at 139, 9 P.3d at 451. Likewise, the duty to promote incorporates the duty to promote "the development and utilization of [water] resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State." Haw. Const. Art. XI, sec. 1 (emphasis added). As was recognized by the majority of this court in *Wai'ola*, "maximizing the water resource's social and economic benefits includes the protection of the resource in its natural state." 103 Hawai'i at 430, 83 P.3d at 693.

*Kelly*, 111 Hawai'i at 223, 140 P.3d at 1003. The Supreme Court has never ratified a decision by any agency authorizing all the water from a stream to be diverted. In fact, in *Waiāhole II*, the court reversed a decision that allowed up to half the water from a stream to be taken

In short, BLNR must "protect instream values to the extent practicable." *Waiāhole II*, 105 Hawai'i 1, 11, 93 P.3d 643, 653 (2004). It is practical to require that A&B begin to line and cover the reservoirs. **Why must 13 streams be drained completely dry while the vast majority of the diverted water is lost due to seepage and evaporation?**

#### **V. Cap Diversions to 27 million gallons per day**

Mahi Pono does not need 45 million gallons of east Maui stream water per day. Or 35 million gallons. Or even 27 million gallons per day.

It has not even come close to using 4 million gallons of water per day to irrigate its crops. Moreover, it has alternative sources of water: groundwater and streams west of Honopou that do not flow through state land. More importantly, it can use millions of gallons of water that are being lost in unlined and uncovered reservoirs.

Quarter	Average taken from East Maui streams	Maui County domestic mgd	Kula Ag Park	Diversified ag	Unaccounted for water – seepage from unlined reservoirs, & evaporation (dust control is miniscule)
Q1	27.79	1.06	.38	2.5	22.75
Q2	22.6	1.8	.41	3.64	15.64
Q3	18.9	3	.5	2.5	11.7

In 2017, A&B diverted on average 23.99 million gallons daily. In 2018, A&B diverted on average 25.75 million gallons daily. In 2019, it diverted approximately 27 million gallons per day. And in 2020, its diversions are far less than 27 million gallons per day.

#### **VI. BLNR Must Address the Harm Caused by Diversion Structures**

Diversion structures: (a) interfere with native aquatic species (blocking migration upstream as well as entraining larvae); (b) facilitate mosquito breeding; and (c) mar natural beauty. BLNR,

however, has authority as a landlord (as opposed to a regulator) because many of these structures are on public land. Therefore, BLNR should order the applicant to pay for an assessment of each diversion structure on state land to determine the degree to which each one: (a) interferes with native aquatic species (blocking migration upstream as well as entraining larvae); (b) facilitates mosquito breeding; and (c) mars natural beauty. BLNR should also order the removal of those structures – within a fixed timeframe (with the possibility of extensions where justified) – that cause the greatest harm.

On April 1, 2010, the Division of Aquatic Resources wrote a letter in which it described simple modification to diversion structures on three streams to allow native species to pass. BLNR should be requiring EMI and A&B to submit stream diversion alteration permit applications to the Water Commission this year to ensure that these modifications take place.

In a January 2, 2020 memorandum, the Division of Aquatic Resources pointed out:

The simple removal of sluice gates is a "great first step" in restoring flow, however, the walls and dams that have been constructed to direct water to intakes and diversions must also be removed or "modified." These areas that constrict flow prevents animals from migrating upstream. The presence of some animals which we've identified helps to validate that few animals can migrate upstream. The multiple diversions prevents healthy populations to successfully migrate to upper elevations.

In an April 13, 2019 email, DAR's Skippy Hau explained:

We are asking that Stream habitat be restored to improve successful migration of aquatic resources. Just restoring stream flow is a good immediate first step but does not address the intermittent conditions the stream experiences throughout the year. Or the impacts to the ecosystem. The previous report cards in the past required the notching of dams and walls to improve continuous stream flow those recommendations should be in the files and were never implemented.

The U.S. Fish and Wildlife Service observed:

Among the major threats to the survival in the wild of the two listed forest bird species is mortality caused by avian malaria, which is vectored by the introduced mosquito *Culex quinquefasciatus*. This mosquito species breeds in stagnant pools free from fish in dewatered stream beds, and is by contrast uncommon along stream channels with continuous now and healthy fish populations. By converting continuously flowing streams into nearly dry beds with scattered small pools, the current EMI diversions thus create corridors of habitat by which *Culex* mosquitoes can penetrate uphill more deeply into the native forest, and more readily reach susceptible native forest bird populations. This represents a significant, although indirect, impact of the proposed diversions to this

set of listed species.

DLNR's Division of Forestry & Wildlife noted:

In our field assessments conducted in May of this year, we noted several general issues of concern related to the proposed abandonment of diversion structures in the forest reserve. Those include: 1. Walls, structures, or channels that alter the natural course of the stream, such that water becomes trapped and stagnant in areas where flow is restricted. Stagnant waters become breeding sites for mosquitoes, which are vectors for introduced diseases that are a major threat to native forest birds. 2. Use of pipes or other structures that are known to obstruct passage of native fish.

When it comes to these permits, the Land Division has consistently disregarded the Division of Forestry and Wildlife and the Division of Aquatic Resources. Enough already.

**You need to ask:** Which structures are still in place? Which ones have been modified? When will they be removed, or modified? We need to know how much progress is being made in permanently modifying or removing artificial structures in our streams.

BLNR must address the harm caused by diversion structures on public land -- particularly where the Water Commission's statutory authority to require the removal of harmful structures is limited.

## **VII. Require A&B and EMI to pay for management of the forest under their control**

In its submittals on revocable permits, the Land Division routinely justifies the use of revocable permits to avoid "forcing the Division to expend resources to maintain these lands." If someone is going to use public forest reserve land, it should only do so if it helps manage the threat posed by invasive species. BLNR has the authority to condition a revocable permit in a manner that "will best serve the interests of the State." HRS §171-58(c); see also HRS § 171-6(6). It is long past time for BLNR to do so. BLNR should require that A&B deposit \$500,000 into the forest stewardship fund, HRS § 195F-4, for the control of invasive species in the east Maui watershed, or contribute \$500,000 to the East Maui Watershed Partnership to hire two additional staff members to reduce the spread of invasive species within the revocable permit area.

Because the applicant wants to use these lands, please make the applicant actually manage these lands. Sam Gon III promised, under oath, on March 11, 2020 that he would ask A&B and EMI to take active measures, or contribute financially, to manage the spread of invasive species on public land in east Maui. The entire board should join him in requiring that A&B and EMI fund efforts to protect our forests.

## **VIII. Require EMI Increase Staffing to Remove Trash from Public Land**

In November 2017, BLNR approved the continuation of the revocable permits on the condition that “A&B needs to clean up their debris starting with more accessible areas and along streams.” On October 16, 2018, A&B claimed “there was little other debris” in the revocable permit area. A&B’s claim is demonstratively false. And the head of EMI admits that old pipes and other debris still litter the revocable permit area. If A&B and Mahi Pono increased EMI’s budget so that EMI could hire and train more staff, EMI’s head testified that more trash could be removed at a quicker pace. Require them to do so. Our public lands and forests should not be treated as a junk yard.

Trash includes unused pipes.

### **IX. Get the Information Now – Before Decisionmaking**

The staff submittal tacitly acknowledges the Sierra Club’s concerns regarding incomplete information. Rather than require that information **before** decisionmaking on the continuation of the revocable permits, however, it suggests obtaining that information some time later.

The staff submittal on page 13 claims that A&B’s “industrial uses” **may** not be consistent with the permit condition that “All water diverted shall be put to beneficial agricultural use or municipal use.” Former A&B executive and current general manager of Honolulu Construction & Draying Co., Ltd. testified under oath just a couple of months ago that HC&D uses between 15,000 and 25,000 gallons per day of east Maui stream water to batch concrete. There is no question that east Maui stream water is being used in a manner that this board previously prohibited. The staff submittal suggests that the board require more information from A&B as to this industrial use. The refusal to take any meaningful action in the face of blatant noncompliance with a permit condition is bad enough. But asking A&B to provide additional information **after** the permit is continued makes no sense at all (particularly since the Sierra Club raised this specific issue in its testimony to you a year ago). If any information is actually needed, it should be required **before** this board votes on continuing the permit – not afterwards. You must determine that the water is and will be used in a reasonable and beneficial manner **before** authorizing the use, not afterwards.

- Page 14 of the staff submittal suggests that BLNR ask for information that the Sierra Club has been seeking for years. However, it asks for the information **after** this board makes its decision for 2021. Before making a decision, this board should know (a) how many acres are being cultivated for each crop (b) how many acres are being cultivated in each field, (c) how many gallons per acre each cultivate crop requires and (d) how much additional water will be needed in 2021, with detailed justification.

- It is long past time for BLNR to ask Maui County fire department officials: which of the 40 reservoirs does the County really need for firefighting? The claims that all 40 are needed is

patently false – some of them now are currently empty. No one should be using the need to fight fires as an excuse for wasting water when water in only some reservoirs is needed.

**In short, this board should not be voting on the continuation of these permits until the applicant provides this information to you.**

#### **X. Remedy Incomplete Staff Submittal**

It is unfortunate that the staff submittal omits key facts.

Page 2 of the staff submittal states that in 2001 Nā Moku requested a contested case hearing on the long term “license.” That’s true. But Nā Moku also asked for a contested case hearing on the revocable permit as well. Nearly twenty years after that request for a contested case hearing on the revocable permit was made – properly, in writing and orally – BLNR has never convened that case – nor has it denied Nā Moku’s request. BLNR has condemned Nā Moku to administrative purgatory. And BLNR has allowed A&B to drag out the environmental impact statement process for years, providing a handy excuse for delaying any resolution of the contested case hearing. Instead, each year BLNR has given A&B all the water that A&B has demanded.

The staff submittal on page 4 mentions that A&B sold its former sugar cane lands in central Maui, but omits a key fact. **The A&B/Mahi Pono sales agreement, found at <http://investors.alexanderbaldwin.com/static-files/af1aea4e-3c42-436d-81bc-79f40e4d9a4a>, provides that if less than thirty million gallons of water is provided to Mahi Pono from the area encompassed by revocable permits and Mahi Pono suffers damages, it can recover up to \$62 million from Alexander & Baldwin.** *Id.* at 6-7 and 47. A&B’s profit from the sale of its central Maui lands was \$62 million more than it would have been thanks to continued water from east Maui’s streams. That \$62 million should be spent on lining the reservoirs to reduce waste, removing the abandoned diversion structures on public land, and getting rid of the invasive species that are destroying our native forests

Last year, A&B misled you. A&B falsely claimed that east Maui stream water was being used to irrigate 6,500 acres of pasture. In fact, of the approximately 30,000 acres of central Maui agricultural lands, only 1,100 acres were being irrigated in 2019. It is unfortunate that the staff submittal does not bother to inform you of this.

#### **XI. Conclusion & Recommendations**

This board has made it abundantly clear that it will continue these revocable permits. It also has already decided to issue a lease – even though an EIS has not been completed. You should not vote until you get the missing information. And after you get that information, the permits be conditioned on the following requirements:

1. Permittee shall cooperate with CWRM and DAR in studies, site inspections and other actions as necessary to address the streams in the license areas not covered by the CWRM order.
2. Permittee shall work with CWRM and DOFAW to ~~determine whether there are alternatives to diversion removal that effectively prevent~~ remove diversion structures that foster mosquito breeding and can be feasibly implemented. Permittee shall include the status of ~~alternatives~~ in their quarterly reports.
3. If the Board or Department finds that a use of water is not reasonable and beneficial and does not comply with the permitted uses, Permittee shall cease such use within a timeframe as determined by the Department. The permitte shall immediately cease using, or allowing the use of, water for industrial purposes.
4. For water used for agricultural crops, Permittee are to estimate how much water is required for each crop per acre per day, and how many acres of each crop are being cultivated. The Permittee shall provide updated information in each quarterly report.
5. Permittee shall submit to the Department a plan for their proposed upgrades, including an implementation timeline, to the irrigation system intended to address CWRM's concerns no later than ~~June~~ March 30, 2021. By November 1, 2021, it shall complete the lining and covering of six reservoirs.
6. Permittee shall pay the 2021 monthly rent amounts as determined above.
7. "Trash and debris" shall be further defined as "any loose or dislodged diversion material such as concrete, rebar, steel grating, corrugated metals, railroad ties, unused pipes etc., that can be removed by hand (or by light equipment that can access the stream as is)."
8. ~~System losses and evaporation shall not be considered as a waste of water.~~
8. In its quarterly reports, the Permittee shall disclose how much water came from streams west of Honopou on average per day.
9. The Permittee shall ensure that between 3 and 17 million gallons of groundwater are pumped and used per day in conjunction with the use of east Maui water. If the Board, Department or Commission on Water Resource Management determines that pumpage of that quantity of water is not sustainable, it shall reduce its pumpage accordingly. In its quarterly reports, the Permittee shall disclose how much groundwater was pumped on average per day.

10. The Permittee shall not divert more than 27 million gallons of water per day, as measured at Honopou for all permits combined. All diverted water shall be for reasonable and beneficial uses.
11. The Permittee shall leave 64% of the baseflow -- the minimum amount of baseflow that native species require to grow and reproduce -- in all 13 streams which CWRM did not address.
12. By March 30, 2012, the Permittee shall submit stream alteration permits to CWRM to modify the diversion structures on Puohokamoa, Waiohue and Hanawi streams identified in the April 1, 2010 Division of Aquatic Resources letter.
13. By November 1, 2020, the Permittee shall prepare an assessment of each diversion structure on state land to determine the degree to which each one: (a) interferes with native aquatic species (blocking migration upstream as well as entraining larvae); (b) facilitates mosquito breeding; or (c) mars natural beauty.
14. The Permittee shall deposit \$500,000 into the forest stewardship fund, HRS § 195F-4, for the control of invasive species in the east Maui watershed, or contribute \$500,000 to the East Maui Watershed Partnership to hire additional staff members to reduce the spread of invasive species within the revocable permit area.
15. The Permittee shall increase its staffing to prioritize the removal of trash and other debris (including unused pipes). It shall disclose changes in staffing levels in its quarterly reports.
16. All prior conditions on the revocable permits not inconsistent with these conditions shall continue to apply.

**From:** Shane Sinenci  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] 11/13 Agenda Item #8 Revocable Permits  
**Date:** Thursday, November 12, 2020 8:32:16 AM

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**Re: 8. Holdover/Continuation 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.**

Aloha Kakou,

I am writing today in opposition of the Continuation of the Revocable Permits for East Maui tax map keys and streams.

These permits expired in 1986 and for 34 years there has been no responsible actions by the applicants to address the maintenance of the system, nor the equitable stewardship of the Public Trust.

Things have changed drastically through the years, the applicant is not actively farming and there are current litigations in the process that requires the courts to set streamflow limits upon certain streams. Recently, the Maui County Council sent its' Water Use Development Plan (WUDP) back to committee to address some of these important issues. For example, water use for Agriculture expansion has not been accurately calculated by the applicant to justify the 45 million gallons/day requests--we need accurately data to even consider continuation of the permits.

In addition, there is an active litigation in the process concerning the Carmichael Case, that has not finished, as well as Department of Hawaiian Homelands input as to how much water is needed for Kuleana Land applicants and Kalo cultivation farmers.

The practice of allowing the continuation of revocable permits without any oversight is an egregious practice that needs to stop immediately. There are many questions that the Board needs to consider when granting these long term permits:

1. Why is there an alleged \$62 million payoff attached to this permit?
2. Why is a Commercial Investment company the applicant for water usage?
3. Why is Mahi Pono, an international entity, not applying for this permit?
4. Why are board members, who seek to benefit off of this permit, able to vote in favor of it?

As an East Maui resident, I take offense to the blatant disregard of our Public Trust. Water is a natural resource that we treasure, and we need to strategically plan wisely when considering its sustainability for the impending generations. For over a hundred years corporate interests have profited off of this vital resource and they continue to pay below the market rates that many of us pay. It is about time that we establish the correct valuations upon this resource and invest into Environmental, Sustainable and Good

Governance (ESG) long-term goals that will net the returns that are rightfully owed to East Maui and to the Pae 'Aina 'O Hawaii.

**"E 'Ola I Ka Wai", Water is Life!** *Take away the Water and You take away the Life.*

*Mahalo for this opportunity,*

*Shane Sinenci  
East Maui*

BOARD OF LAND AND NATURAL RESOURCES

NOVEMBER 13, 2020

9:00 A.M.

Online via ZOOM, Livestream via YouTube

[blnr.testimony@hawaii.gov](mailto:blnr.testimony@hawaii.gov).

TESTIMONY

Re: **D-8** Holdover/Continuation 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

Members of the Board of Land and Natural Resources:

My name is Robinson David, farmer in Upcountry Maui. I strongly support this measure.

I farm various crops, green onions, Chinese cabbage, eggplant, baby pak choy, and other vegetables. I am on lease land so in addition to my farm inputs, I need to pay lease for the land. Water is very important and how much crop I can grow depends on how much water I have.

Please support of this measure so farmers like me can continue to farm. Thank you.

BOARD OF LAND AND NATURAL RESOURCES

NOVEMBER 13, 2020

9:00 A.M.

Online via ZOOM, Livestream via YouTube

[blnr.testimony@hawaii.gov](mailto:blnr.testimony@hawaii.gov).

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Members of the Board of Land and Natural Resources:

My name is Shep Murray, a long time Upcountry resident and retired former owner of Wai Ulu Farms. I strongly support the passage of these permits, providing water to Upcountry residents and agriculture.

Providing feed to Upcountry livestock has given me a great appreciation of the trials and tribulations ranchers undergo to keep their operations in production. I have seen the heartache and the pain in their faces when herds need to be culled due to the lack of feed.

I want to see agriculture continue in Upcountry .. or what will this precious rural countryside be? I don't want it to be it chopped up into homes with the wide open agriculture gone. During heavy storms I know Kihei experiences floods. Where does the water come from? Upcountry. And, this is with the existing open working agricultural lands. Imagine what will happen with increased roads and pavements .. Kihei can expect more floods. The reefs will have more silt and then we will have to spend monies to manage the floods.

Agriculture will need this water and the potential consequence of loss of the ag without water needs to be seriously considered. I respectfully request your consideration of all of the potential ramifications when making your decision. I believe support of this request is warranted.

Thank you.

 11/11/20

BOARD OF LAND AND NATURAL RESOURCES

NOVEMBER 13, 2020

9:00 A.M.

Online via ZOOM, Livestream via YouTube

blnr.testimony@hawaii.gov.

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Members of the Board of Land and Natural Resources:

My name is Terry Quisenberry, a long time Upcountry resident. I am in support of these permits.

I appreciate what is Upcountry Maui. I also volunteer on the Na Ala Hele (NAH) Maui Advisory Council, addressing trail access on State lands.

I see the need for balance between the needs of our forests and human activity. As we provide access for hiking, we also need to be sensitive to the forest ecosystem and ensure that we minimize disturbance and unnecessary impacts. In the same way, our forest ecosystems need water but our people and agriculture also need water. The purpose of this Board is to find the balance.

I understand water has been restored to critical streams. Upcountry during the past decades almost seems to be in constant drought. It is a challenge to find the balance if the quantity of resource keeps changing.

The Covid has increased our awareness of the need for local ag. Many of us have begun growing some vegetables at home. All of this needs water. I ask for your support in passing these permits to meet critical off stream needs. Thank you.

A handwritten signature in black ink, appearing to read "Terry Quisenberry", with a long horizontal flourish extending to the right.

BOARD OF LAND AND NATURAL RESOURCES

NOVEMBER 13, 2020

9:00 A.M.

Online via ZOOM, Livestream via YouTube

[blnr.testimony@hawaii.gov](mailto:blnr.testimony@hawaii.gov).

TESTIMONY

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Members of the Board of Land and Natural Resources:

My name is Chris Baucus, Upcountry resident and retired principal from Kula School. I am in **STRONG SUPPORT** of the renewal of these permits.

I am a long time resident of Upcountry and as I retired from the school system want to return to ranching. I have many rancher friends and have helped them shoe their horses and other tasks as needed. I see the challenges faced by them as droughts extend and admire their commitment to ranching when there is great uncertainty if there will be water for them as these permits come before you every year. Most bankers will question why you invest in a business when the reliability of access to one of your major input resources is put into question every year.

I also believe in agriculture and am working on a farm for students in Keokea. That too is depend on these waters as water from these permits needs to be pumped to the water systems during a drought. A goal at this farm is to teach students about the importance and wise use of water resources. We also hope to grow farmers for the future.

All of these endeavors depend on the continued access to water. Your support with the passage of these permits will be appreciated.

Thank you.

A handwritten signature in black ink, appearing to be 'CB' or similar initials, written in a cursive style.

BOARD OF LAND AND NATURAL RESOURCES

NOVEMBER 13, 2020

9:00 A.M.

Online via ZOOM, Livestream via YouTube

[blnr.testimony@hawaii.gov](mailto:blnr.testimony@hawaii.gov).

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Members of the Board of Land and Natural Resources:

My name is Heidi Watanabe, part of a family farm operation, Mountain View Bounty and Watanabe Processing. I am in STRONG SUPPORT of the renewal of these revocable permits.

We are the provider of precut vegetables and fruits to Maui's schools and restaurants. We buy vegetables from local producers as part of our processing operation. Water is one of the variables that affects the reliability of supply from local farmers. Farmers will not plant if they know lack of water may force them to abandon a crop. Maui County provides priority to agriculture in the event of a drought, giving them time to finish their harvest. However, we all know in a severe drought, public water must come first. We are already in a drought with water from the existing water permits. It scares me to think what would happen if these permits are not renewed. We recently invested in the expansion of our operations. The risk for us is enormous.

I respectfully request your support in passing this measure. Farmers, like me, depend on it.

Thank you for providing this opportunity to provide comments on this important matter.

November 11, 2020

Board of Land & Natural Resources

Meeting, November 13, 2020

Agenda Item # D8

Testimony

Aloha and thank you for the opportunity to submit testimony in favor of the continuation of the revocable permits for water use to Alexander & Baldwin (A & B) and East Maui Irrigation Company (EMI).

We have lived in Kula for over 50 years and are dependent on East Maui Water for our personal and agriculture usage. We are well aware what the effects of water shortages have had on us and our neighbors since we have been asked to cut back on our consumption almost every year.

Any further reduction in water flow would be devastating to many of us especially during drought years.

I realize that a long term water lease is being pursued and would like to ask for your approval of the continuation of the existing Revocable Permits for Water Use to A & B and EMI until a long term lease is solidified.

Thank you again for the opportunity to submit testimony on this very important issue to Upcountry residents.

Marsha Wienert

60 Kekaulike Avenue

Kula, HI 96790

**From:** Rep. Tina Wildberger  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** A&B & MP stream diversion  
**Date:** Thursday, November 12, 2020 8:00:57 AM

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Aloha BLNR Chair and Members,

Please accept this email as testimony about Maui's stream restoration. #D8 on your Land Division agenda. After legislation to permit continued water theft failed, your state agency decided to give away somewhere in the ballpark of 40mgd of diverted stream water out of East Maui to benefit the foreign private equity organization that is Mahi Pono. Mahi Pono needs to pay for the water it takes. The barren scars that traverse Haleakala need to be restored to flowing streams. BLNR should not function as an enabler of water theft, rather manage equitably, our public trust resources.

At a minimum, at least demand that these precious water resources not be wasted. Create provisions that mandate repair of leaks in the delapidated transmission system and require reservoirs be lined to abate needless water waste.

Mahalo,  
Tina Wildberger  
District 11  
Kihei ~ Wailea ~ Makena

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November 11,2020

Chairperson Suzanne Case  
Commission Members  
Commission On Water Resource Management  
State of Hawaii  
Board of Land & Natural Resources  
P.O. Box 621  
Honolulu, Hawaii, 96809

RE: November 13,2020 Board Meeting Testimony  
Item D8, Holdover/Continuation of Revocable Permits

Aloha Committee Members:

My name is Lynne Woods and I offer the following testimony as a longtime resident and member of the agriculture community of Kula Maui.

I encourage this Commission to support passage to continue the Revocable Permits for Water Use to Alexander & Baldwin and East Maui Irrigation Company. There are two areas I wish to address that are of great concern to upcountry residents dependent on water security

1 The often-interrupted availability of water for those residents living in Kula who are required to reduce water consumption due to drought. We are currently on 25% cutback of water usage that has lasted most of 2020. Maui County's water storage and deliver infrastructure is consistently challenged to provide the needed water for its upcountry citizens making us dependent on waters provided by the East Maui Water System. The loss of this resource diversion from East Maui streams places upcountry residence in a very precarious position.

2. The farming communities of central Maui are totally dependent on the East Maui Water System as the central Maui crops are unable to tolerate the salinity of the brackish water wells. With the loss of our sugar plantation we have learned that central Maui is but a dust bowl without agriculture. We need to support the efforts of diversified agriculture in our central area.

The upcountry ranching and farming community would falter and fail to provide the produce needed to feed our citizens without the diversion of East Maui Water given our County's system inadequacies. As it is our farms are forced to use potable water as there is no availability of non-potable water for irrigation purposes.

During this ongoing experience with the pandemic the farming community and the County of Maui have be able to provide a continuing supply of fresh produce for our citizens. They have been able to accomplish this feat because of the addition and dependability of East Maui water resources.

Maui has over the last decade strived to provide a sustainable supply of food for its population and visitors. In do so we learned that we could feed our people in times of need and we have also learned that agriculture can truly be a successful additional industry for our county as it was so many years ago.

What seriously influences this renewed agriculture industry is the fear of not enough water for Maui's needs and that unknown of the constant annual challenges to the Alexander Baldwin and East Maui Irrigation Company water management permit. I encourage this Commission to renew the permit in question and most of all I encourage your Commission to approve a longer term permit for water use for Alexander & Baldwin and the East Maui Irrigation Company in order to provide for Maui County the security of a dependable, well managed access to water for our residents, farmers, ranchers and industries we work so diligently to attract to Hawaii.

I thank you for your dedication to this Commission and the needs of our communities as I know the issues before you require much research and consideration.

Yours truly,

Lynne Woods  
808-276-0107  
crash622@gmail.com