

From: [Stacey Alapai](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Oppose premature proposal of agenda item D-4
Date: Wednesday, November 6, 2024 1:29:20 PM

Aloha Chair Chang and Members of the Board of Land and Natural Resources,

My name is Stacey and I strongly OPPOSE the recommendation in agenda item D-4. I plan to testify via zoom as well.

Please give the East Maui Community Water Authority a chance to implement the will of Maui residents to manage our own water resources. This premature proposal gives an unfair advantage to the status-quo of colonial/corporate water management that we have been under since the plantation-era that is older than the State of Hawaii. We have an opportunity here to do something different that is more in alignment with traditional water resource management that benefits all of our people and 'āina.

I also agree and cosign onto any testimony given by Na Moku Aupuni O Ko'olau Hui and the Sierra Club.

The proposed long-term disposition in this agenda item is premature and threatens to only create more conflict and uncertainty over Maui's water resources. The proposal would authorize more water to be diverted than would be available after the Water Commission's amended interim instream flow standards are implemented; ignores the still-unfulfilled need to implement these flow standards, which are critical to stopping the ongoing harm being inflicted on East Maui's streams, watersheds, and estuaries; turns a blind eye to the significant and ongoing waste of public trust water, including from leaky unlined reservoirs; and fails to give the 'Aha Wai o Maui Hikina a fair chance at negotiating for the disposition of Maui Hikina's streams, before launching a contested case hearing over a potential water license to a real estate investment trust and Canadian pension fund with no duty to uphold the public trust or the public's interests in their control over Maui's water resources.

Please do not allow this recommendation to move forward, which would allow private corporate entities to continue to flaunt the public trust and state water code - including the Water Commission's still-outstanding orders - while wasting potentially millions of gallons of water per day with no

consequence.

Mahalo nui for your consideration of this testimony.

Sincerely,
Stacey Alapai
Makawao, HI

From: [Anne A](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] opposition to item D-4
Date: Wednesday, November 6, 2024 7:01:56 PM

Aloha Chair Chang and Members of the Board of Land and Natural Resources,

My name is Anne Allison and I strongly OPPOSE the recommendation in agenda item D-4.

The proposed long-term disposition in this agenda item is premature and threatens to only create more conflict and uncertainty over Maui's water resources. The proposal would authorize more water to be diverted than would be available after the Water Commission's amended interim instream flow standards are implemented; ignores the still-unfulfilled need to implement these flow standards, which are critical to stopping the ongoing harm being inflicted on East Maui's streams, watersheds, and estuaries; turns a blind eye to the significant and ongoing waste of public trust water, including from leaky unlined reservoirs; and fails to give the 'Aha Wai o Maui Hikina a fair chance at negotiating for the disposition of Maui Hikina's streams, before launching a contested case hearing over a potential water license to a real estate investment trust and Canadian pension fund with no duty to uphold the public trust or the public's interests in their control over Maui's water resources.

Please do not allow this recommendation to move forward, which would allow private corporate entities to continue to flaunt the public trust and state water code - including the Water Commission's still-outstanding orders - while wasting potentially millions of gallons of water per day with no consequence.

Mahalo nui for your consideration of this testimony.

Sincerely,
Anne Allison, resident of Maui]

From: [Loke Aloua](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Testimony in opposition to agenda item D-4
Date: Wednesday, November 6, 2024 2:23:11 PM

Aloha Chair Chang and Members of the Board of Land and Natural Resources,

My name is Loke Aloua and I strongly OPPOSE the recommendation in agenda item D-4. It is honestly absolutely crazy that this item is listed on your agenda. The 'ohana of these lands have been fighting for decades for their wai to uplift the health of the land and people. Our communities are constantly forced to fight for their wai when this is the duty of the State. 'Aha Wai o Maui Hikina, otherwise known as the East Maui County Water Authority, are invested in caring for wai and putting it back into local control. Let them lead.

Mahalo to all those who have fought for decades for our wai.

--

Cocoa cracka butta morning, hāloa till high noon, dry fish poi will meet you.

From: [Harvey Arkin](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] I strongly OPPOSE the recommendation in agenda item D-4.
Date: Wednesday, November 6, 2024 2:06:29 PM

Aloha Chair Chang and Members of the Board of Land and Natural Resources,

My name is Harvey Arkin and I strongly OPPOSE the recommendation in agenda item D-4.

The proposed long-term disposition in this agenda item is premature and threatens to only create more conflict and uncertainty over Maui's water resources. The proposal would authorize more water to be diverted than would be available after the Water Commission's amended interim instream flow standards are implemented; ignores the still-unfulfilled need to implement these flow standards, which are critical to stopping the ongoing harm being inflicted on East Maui's streams, watersheds, and estuaries; turns a blind eye to the significant and ongoing waste of public trust water, including from leaky unlined reservoirs; and fails to give the 'Aha Wai o Maui Hikina a fair chance at negotiating for the disposition of Maui Hikina's streams, before launching a contested case hearing over a potential water license to a real estate investment trust and Canadian pension fund with no duty to uphold the public trust or the public's interests in their control over Maui's water resources.

Please do not allow this recommendation to move forward, which would allow private corporate entities to continue to flaunt the public trust and state water code - including the Water Commission's still-outstanding orders - while wasting potentially millions of gallons of water per day with no consequence.

Mahalo nui for your consideration of this testimony.

Sincerely,
Harvey Arkin
Manoa

From: [D.Austin](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Testimony in Opposition to Agenda Item D-4
Date: Wednesday, November 6, 2024 5:37:01 PM

Aloha,

Auwe! What is the goal of this proposal? Who are the beneficiaries? Kanaka? Kamaaina? Off-island investment companies?

No long-term water disposition should be issued until the Commission on Water Resource Management's (CWRM) stream flow standards are met. Modifications ordered in 2018 and 2022 to East Maui stream diversions have not been completed, which impacts cultural and ecological values.

BLNR must negotiate with the County Water Authority before considering any agreements with private entities. Public access to water is protected by law and holds priority over private interests.

As stated on a portion of your website, "In 1978, the State of Hawaii's Constitutional Convention identified the State's "obligation to protect, control and regulate the use of Hawaii's water resources for the benefit of its people." Under Article XI, Section 7, of the State Constitution, "The legislature shall provide for a water resources agency which, as provided by law, shall set overall **water conservation, quality and use policies; define beneficial and reasonable uses; protect ground and surface water resources, watersheds and natural stream environments; establish criteria for water use priorities while assuring appurtenant rights and existing correlative and riparian uses** and establish procedures for regulating all uses of Hawaii's water resources."

The East Maui Water Agency is a branch dedicated to the upholding of that particular constitutional amendment, and should be given every opportunity to respond to this proposal, without a pressure to meet an unnecessary deadline.

Also, the East Maui Water Agency is a new agency just getting started; it should be given a chance to implement its plans and policies effectively. Initiating a contested case now is premature; it would be more responsible to wait until EMWA is fully up and running. **There's no valid reason to rush this process.**

Please do not allow this recommendation to move forward, which would allow private corporate entities to continue to flaunt the public trust and state water code – including the Water Commission's still-outstanding orders – while wasting potentially millions of gallons of water per day with no consequence.

Mahalo nui loa for this opportunity to testify.

D. Austin
Kihei, Maui

From: [Barbara Barry](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Oppose Recommendation in Agenda D-4.
Date: Wednesday, November 6, 2024 10:11:00 AM

Barbara Aloha Chair Chang and Members of the Board of Land and Natural Resources,

My name is Barbara Barry and I strongly OPPOSE the recommendation in agenda item D-4.

The proposed long-term disposition in this agenda item is premature and threatens to only create more conflict and uncertainty over Maui's water resources. The proposal would authorize more water to be diverted than would be available after the Water Commission's amended interim instream flow standards are implemented; ignores the still-unfulfilled need to implement these flow standards, which are critical to stopping the ongoing harm being inflicted on East Maui's streams, watersheds, and estuaries; turns a blind eye to the significant and ongoing waste of public trust water, including from leaky unlined reservoirs; and fails to give the 'Aha Wai o Maui Hikina a fair chance at negotiating for the disposition of Maui Hikina's streams, before launching a contested case hearing over a potential water license to a real estate investment trust and Canadian pension fund with no duty to uphold the public trust or the public's interests in their control over Maui's water resources.

Please do not allow this recommendation to move forward, which would allow private corporate entities to continue to flaunt the public trust and state water code - including the Water Commission's still-outstanding orders - while wasting potentially millions of gallons of water per day with no consequence.

Mahalo nui for your consideration of this testimony.

Sincerely,
Ms Barbara Barry
Ha'ikū, Hawai'i

From: [kaleo](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Item d4
Date: Wednesday, November 6, 2024 10:30:32 AM

Aloha Board Members, My name is Kaleo Benjamin, and I was born and raised on Maui. I kindly request that the board move forward with the water lease application to ensure that we can continue to support sustainable agriculture on our island. A reliable water source is essential for the future of local food production and the overall well-being of our community. Your decision to move forward will help secure a sustainable future for Maui. Mahalo for your consideration.

From: [Brian R Birdsall](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Item D4
Date: Wednesday, November 6, 2024 10:47:30 AM

Aloha Board Members,

My name is Brian Birdsall, and I am pleased with the work Mahi Pono is doing to transition former sugarcane fields into diversified agriculture in the central Maui plain. It is truly beautiful to see our island turning green again, and I am hopeful that the state will issue a long-term water lease so that East Maui Irrigation can invest in water-saving infrastructure upgrades. These improvements are essential for the long-term benefit of our island and will help ensure sustainable water management for agriculture in the future.

Mahalo for your consideration.

Mahalo,

Brian Birdsall

From: [Bo Breda](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Natural Resources
Date: Wednesday, November 6, 2024 9:11:08 AM

Subject: Agenda item D-4

Aloha Chair Chang and Members of the Board of Land and Natural Resources,

My name is Bo Breda and I strongly OPPOSE the recommendation in agenda item D-4.

The proposed long-term disposition in this agenda item is premature and threatens to only create more conflict and uncertainty over Maui's water resources. The proposal would authorize more water to be diverted than would be available after the Water Commission's amended interim instream flow standards are implemented; ignores the still-unfulfilled need to implement these flow standards, which are critical to stopping the ongoing harm being inflicted on East Maui's streams, watersheds, and estuaries; turns a blind eye to the significant and ongoing waste of public trust water, including from leaky unlined reservoirs; and fails to give the 'Aha Wai o Maui Hikina a fair chance at negotiating for the disposition of Maui Hikina's streams, before launching a contested case hearing over a potential water license to a real estate investment trust and Canadian pension fund with no duty to uphold the public trust or the public's interests in their control over Maui's water resources.

Please do not allow this recommendation to move forward, which would allow private corporate entities to continue to flaunt the public trust and state water code - including the Water Commission's still-outstanding orders - while wasting potentially millions of gallons of water per day with no consequence.

Mahalo nui for your consideration of this testimony.

Sincerely,
Bo Breda

From: [Ravinder Bugga](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Testimony in Opposition to Agenda Item D-4
Date: Wednesday, November 6, 2024 10:17:15 PM

Aloha Chair Chang and Members of the BLNR,

My name is **Ravi Bugga** and I strongly OPPOSE the recommendation in agenda item D-4.

The proposed long-term disposition in this agenda item is premature and threatens to only create more conflict and uncertainty over Maui's water resources. The proposal would authorize more water to be diverted than would be available after the Water Commission's amended interim instream flow standards are implemented; ignores the still-unfulfilled need to implement these flow standards, which are critical to stopping the ongoing harm being inflicted on East Maui's streams, watersheds, and estuaries; turns a blind eye to the significant and ongoing waste of public trust water, including from leaky unlined reservoirs; and fails to give the 'Aha Wai o Maui Hikina a fair chance at negotiating for the disposition of Maui Hikina's streams, before launching a contested case hearing over a potential water license to a real estate investment trust and Canadian pension fund with no duty to uphold the public trust or the public's interests in their control over Maui's water resources.

Please do not allow this recommendation to move forward, which would allow private corporate entities to continue to flaunt the public trust and state water code – including the Water Commission's still-outstanding orders – while wasting potentially millions of gallons of water per day with no consequence.

Mahalo nui for your consideration of this testimony.

Sincerely,

Ravi Bugga

Maui

Sent from my iPad

JOSH GREEN, M.D.
GOVERNOR
STATE OF HAWAII
*Ke Kia'āina o ka Moku'āina o
Hawaii*

SYLVIA J. LUKE
LT. GOVERNOR
STATE OF HAWAII
*Ka Hope Kia'āina o ka Moku'āina
o Hawaii*



KALI WATSON
CHAIRPERSON, HHC
Ka Luna Ho'okele

KATIE L. LAMBERT
DEPUTY TO THE CHAIR
Ka Hope Luna Ho'okele

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS
Ka 'Oihana 'Āina Ho'opulapula Hawaii'i

P O BOX 1879
HONOLULU, HAWAII 96805

November 4, 2024

TESTIMONY

TO: Dawn Chang, Chairperson
Board of Land and Natural Resources (BLNR)

FROM: Kali Watson, Chairperson
Department of Hawaiian Home Lands (DHHL) *Kali Watson*

RE: **BLNR Agenda Item D-4, meeting of November 8, 2024ⁱ**

Dear Chair Chang:

The Department of Hawaiian Home Lands (DHHL) offers this testimony on the above referenced agenda item. **DHHL respectfully requests a deferral of this agenda item.**

We believe the proposed action does not align with the substantially and constitutionally protected rights of the Hawaiian Homes Commission (HHC), DHHL, and our beneficiaries. DHHL believes that additional information, such as an appraisal, updated interim instream flow standards (IIFSs), and water reservations approved by the Commission on Water Resource Management (CWRM), would provide a more comprehensive understanding of the proposed action.

As was reported, the similar agenda item D-12 was deferred from the September 27, 2024, BLNR agenda to not only respect the newly established local water authority on Maui, but also to support Mayor Bissen's request to explore long-term partnership opportunities to address public and private interests. DHHL respectfully requests the DLNR adhere to their previously stated intentions and commitments. If the Board is unable to accommodate our request for a deferral, DHHL must be made an essential party in the Contested Case Hearing to ensure that DHHL and our beneficiary interests and rights are protected.

Below we describe our interests and rights related to the East Maui Irrigation (EMI) System and our desired outcomes. We trust that our perspective will be respected by the Board and lead to a favorable resolution that preserves DHHL's paramount rights to the water resources that are at the heart of this matter before the Board.

DHHL's interests and rights related to the EMI System

Water Reservations for DHHL homesteading

The DHHL, HHC and our beneficiaries have a deep-rooted connection to the waters historically and currently diverted by the EMI system and the EMI system itself. The waters diverted are the most viable water source for our 6,942 acres of DHHL lands in Kēōkea - Waiohuli and Pūlehunui. DHHL submitted a reservation petition to CWRM related to this system on December 16, 2020, which CWRM has not yet fully acted upon. Under Hawai'i Revised Statute (HRS) 171-58(g), the BLNR is obligated to notify, consult with, and jointly develop a reservation of water rights for current and future homestead needs before issuing water leases. While we appreciate that Exhibit A to the submittal acknowledges and contemplates DHHL's rights in section 2a, we believe that further clarification and discussion is necessary to ensure that our interests are fully protected by having clear and specific language as to the obligations any potential licensee would be subject to, for example, to specify one or more delivery points for these waters to DHHL; that the cost of water delivery to DHHL shall be at no charge; and that the licensee must prioritize DHHL needs and any other public trust uses of water over any non-public trust uses at all times. We look forward to working collaboratively with BLNR and DLNR staff to finalize these details.

Appraisal and Native Hawaiian Rehabilitation Fund Revenue

As outlined under section 213 of the Hawaiian Homes Commission Act (HHCA) and Article XII, Section 1 of the Hawai'i State Constitution, DHHL is entitled to 30% of the revenue generated from any water disposition (via license, lease, or revocable permit or otherwise). These monies are payable into the Native Hawaiian Rehabilitation Fund (NHRF). Given the significant scale of the EMI system, the proposed licensing process and associated lease terms will have substantial impact on DHHL's financial interests. As noted above, DHHL needs to be consulted, and its needs acknowledged and incorporated in whatever final form this action takes.

East Maui Regional Community Board / `Aha Wai o Maui Hikina

The recently constituted East Maui Regional Community Board / `Aha Wai o Maui Hikina includes a designated seat for a representative of the Hawaiian Homes Commission (HHC). DHHL is actively involved in the work of the East Maui Regional Community Board / `Aha Wai o Maui Hikina through the participation of our consultant, Jonathan Likeke Scheuer. The inclusion of a designated seat for DHHL on the East Maui Regional Community Board / `Aha Wai o Maui Hikina represents a significant milestone in advocating for our interests in water resources and the assurance of the prioritization of public trust purposes. The creation of this designated seat reflects the County of Maui's acknowledgment of DHHL's important role in water resource management. Due to delays related to fire recovery and other issues, this important Board is just starting its work. We recall that a past related proposal was deferred to show deference to the newly formed local water authority and understand that moving forward with this item will foreclose the possibility of direct negotiation between the County and BLNR.

Other Rights our HHC, DHHL, and Beneficiaries may possess

In addition to the rights we have discussed, we also note that there are other rights our HHC, DHHL, and beneficiaries may possess related to the EMI and its water resources. These include, but are not limited to, the rights to exercise traditional and customary practices related to the waters diverted; rights to water for farming and ranching purposes that are not on conducted on Hawaiian Home Lands; the water needs for our `āina at Ke`anae and Wailuanui that were historically dewatered by the EMI system; and any domestic water rights that our beneficiaries may possess.

Our Desired Outcomes

Given the reasons outlined above, DHHL respectfully requests that BLNR defer this action and instead convene a meeting with relevant stakeholders, as was initially proposed. If BLNR is unable to accommodate our request for a deferral, we are an essential party in the Contested Case Hearing.

If the Contested Case Hearing proceeds, DHHL will advocate for changes to the license provisions and proposed process including but not limited to addressing the concerns outlined above. For these reasons DHHL strongly encourages the BLNR to defer action on Item D-4 until the aforementioned issues are resolved. DHHL remains committed to working collaboratively with BLNR and DLNR staff to ensure the interests of our beneficiaries, Commission, and Department are protected.

¹ The full title of this agenda item is **DECISION MAKING REGARDING:**

Recommendation to hold a contested case hearing over the proposed disposition of a water license by public auction or by direct negotiation to the County of Maui covering the diversion of public surface water not to exceed an amount of 85.23 million gallons per day from Koolau Forest Reserve, Island of Maui, Hawai`i

From: [Glenn Choy](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Agenda Item D-4
Date: Wednesday, November 6, 2024 11:42:00 AM

I strongly oppose the recommendations of Item D-4

Sent from my iPhone

From: [Roslyn Cummings](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Opposition to D-4
Date: Wednesday, November 6, 2024 9:15:48 AM

Aloha Chair Chang and Members of the Board of Land and Natural Resources,

Inoa Roslyn Cummings a Na Kanaka, I strongly OPPOSE the recommendation in agenda item D-4.

This proposed long-term disposition is not only premature but also threatens to escalate conflict and uncertainty surrounding Maui's vital water resources Ola waiwai. It seeks to authorize more water diversion than what will be available once the Water Commission's amended interim instream flow standards are finally implemented. We cannot ignore the urgent need to fulfill these standards, which are essential for halting the ongoing damage to East Maui's streams, watersheds, and estuaries.

Moreover, this proposal turns a blind eye to the significant waste of our trust water as written in Hawaiian Kingdom Law—a reality we can no longer accept. Leaky unlined reservoirs are just one example of this ongoing negligence. Additionally, it fails to provide the 'Aha Wai o Maui Hikina the opportunity to negotiate fairly regarding the management of Maui Hikina's streams. Instead, we are faced with the prospect of a contested case hearing that would potentially grant a water license to a real estate investment trust and a Canadian pension fund, neither of which hold any obligation to protect the public trust or our interests in Maui's water resources. Called Unjust Enrichment by putting corporate interest above Public.

I urge you not to allow this recommendation to proceed. Allowing private corporations to continue disregarding kuleana interests, including the Water Commission's outstanding orders, while wasting millions of gallons of water each day without accountability is unacceptable. Avoidance of Public Distrust.

Mahalo nui for considering my testimony.

aloha i ke kahi i ke kahi,
Roslyn Cummings

From: [Susan Douglas](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Testimony in Opposition to Agenda Item D-4
Date: Wednesday, November 6, 2024 4:58:22 PM
Attachments: [image001.png](#)

Aloha Chair Chang and Members of the BLNR,

My name is Susan Douglas and I strongly OPPOSE the recommendation in agenda item D-4.

The proposed long-term disposition in this agenda item is premature and threatens to only create more conflict and uncertainty over Maui's water resources. The proposal would authorize more water to be diverted than would be available after the Water Commission's amended interim instream flow standards are implemented; ignores the still-unfulfilled need to implement these flow standards, which are critical to stopping the ongoing harm being inflicted on East Maui's streams, watersheds, and estuaries; turns a blind eye to the significant and ongoing waste of public trust water, including from leaky unlined reservoirs; and fails to give the 'Aha Wai o Maui Hikina a fair chance at negotiating for the disposition of Maui Hikina's streams, before launching a contested case hearing over a potential water license to a real estate investment trust and Canadian pension fund with no duty to uphold the public trust or the public's interests in their control over Maui's water resources.

Please do not allow this recommendation to move forward, which would allow private corporate entities to continue to flaunt the public trust and state water code – including the Water Commission's still-outstanding orders – while wasting potentially millions of gallons of water per day with no consequence. Mahalo nui for your consideration of this testimony.

1. EMWA Needs Time to Operate Fully

- EMWA is a new agency just getting started; it should be given a chance to implement its plans and policies

effectively.

2. Delay Contested Case

- Initiating a contested case now is premature; it would be more responsible to wait until EMWA is fully up and running. There's no valid reason to rush this process.

3. Inappropriate Water Proposal

- The current proposal requests more water than stream flow standards allow, making it unsuitable at this stage.

4. Fulfill CWRM's Orders First

- No long-term water disposition should be issued until the Commission on Water Resource Management's (CWRM) stream flow standards are met. Modifications ordered in 2018 and 2022 to East Maui stream diversions have not been completed, which impacts cultural and ecological values.

5. Prioritize Public Trust in Water Negotiations

- BLNR must negotiate with the County Water Authority before considering any agreements with private entities. Public access to water is protected by law and holds priority over private interests.

6. Appraisal Before Long-Term Disposition

- An appraisal of the water resources is legally required and should occur before any discussions on a 30-year water license begin to ensure transparency and informed decision-making.

7. Transparency in Negotiations

- Key terms related to watershed management and stream monitoring must be disclosed before any BLNR action. No behind-closed-doors negotiations should occur for public resources.

8. Reduce System Losses and Address Wastage

- The proposed license fails to address excessive water losses in the diversion system. CWRM has recommended infrastructure improvements to prevent these losses, which must be prioritized.

9. Sensible Allocation for Irrigation

- The proposed allocation for irrigation is excessive and should reflect the actual needs of Mahi Pono's crops. Additionally, existing groundwater resources should be used to reduce the demand for stream water.
10. **Limit Water Allocations to County**
- The proposed allocation to the County exceeds historical usage, leading to potential wastage. Any allocations should be based on actual, demonstrated need.

Warmest Mahalo and Aloha!

Susan Douglas

84A Iliwai Loop

(that's spelled I L I W A I)

Kihei, Maui, HI 96753

H: 808 879 1112, landline, you can call 24/7, if you get my machine you can leave a long message, best chance of reaching me live, no texts.

C: 808 205 1893, good for texts or VM but the ringer is usually off, I check a few times/day.

sd3@hawaii.rr.com



From: [Kekoa Enomoto](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] 11/8/24 agenda item D-4
Date: Wednesday, November 6, 2024 11:32:44 AM

Regarding BLNR agenda item D-4 about a license to more than 85 million gallons per day (MGD) of East Maui surface water, a Native Hawaiian advocate advised “that the state will try to change the water code and move decision-making power back to the Maui County Council.”

I support ‘Aha Hui O Maui Hikina (aka the East Maui Regional Community Board water authority) retaining its power to manage and deliver water in the best interests of Valley Isle residents. I do so for three reasons, as follows:

- The State Water Code assigns water-use priority first to farmers, and second to beneficiaries of the 1920 Hawaiian Homes Commission Act (HHCA) that catalyzed the Territory of Hawai‘i into becoming the State of Hawai‘i.
- Department of Hawaiian Home Lands water consultants have determined that HHCA beneficiaries need an East Maui-sourced nonpotable-water allotment of 11.18 MGD to support buildout of 6,930 acres of Upcountry and Pulehunui homelands.
- The beneficiary nonprofit Pa‘upena Community Development Inc. aims to develop 245 two-acre sustainable-agriculture homestead lots on 646 Pulehunui acres, to address Maui food-sovereignty and housing-crisis issues.

Maui County voters created the ‘Aha Hui O Maui Hikina water authority by county charter amendment in late 2022. For BLNR members to usurp the power of this public authority would be lamentable if not grievous.

—Kekoa Enomoto

Member of the board,
Pa‘upena Community Development Inc.
(808) 276-2713

From: [Amy Fonarow](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Testimony in Opposition to Agenda Item D-4
Date: Wednesday, November 6, 2024 7:01:51 PM

Aloha Chair Chang and Members of the Board of Land and Natural Resources,

My name is Amy Fonarow, and I strongly oppose the recommendation in agenda item D-4.

The amount of water requested is more than stream flow standards allow, which makes the proposal unsustainable.

More importantly, BLNR has not yet discussed this plan with the County Water Authority. Public access to water is protected by law, and the public's use of such an important natural resource should be prioritized over private use.

It is crucial to consider the future of everyone living on Maui for the next thirty years, not just private entities.

Thank you for your thoughtful consideration of my testimony.

I definitely appreciate your help.

Mālama pono,
Amy Fonarow

From: [Breanne Fong](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] 4 - D Agenda Item for Friday November 8, 2024
Date: Wednesday, November 6, 2024 11:13:51 PM

Aloha Chair Chang and Members of the Board of Land and Natural Resources,

My name is Breanne Fong, and I strongly OPPOSE the recommendation in agenda item D-4.

The proposed long-term disposition in this agenda item is premature and threatens to only create more conflict and uncertainty over Maui's water resources. The proposal would authorize more water to be diverted than would be available after the Water Commission's amended interim instream flow standards are implemented; ignores the still-unfulfilled need to implement these flow standards, which are critical to stopping the ongoing harm being inflicted on East Maui's streams, watersheds, and estuaries; turns a blind eye to the significant and ongoing waste of public trust water, including from leaky unlined reservoirs; and fails to give the 'Aha Wai o Maui Hikina a fair chance at negotiating for the disposition of Maui Hikina's streams, before launching a contested case hearing over a potential water license to a real estate investment trust and Canadian pension fund with no duty to uphold the public trust or the public's interests in their control over Maui's water resources.

Please do not allow this recommendation to move forward, which would allow private corporate entities to continue to flaunt the public trust and state water code - including the Water Commission's still-outstanding orders - while wasting potentially millions of gallons of water per day with no consequence.

Mahalo nui for your consideration of this testimony.

Sincerely,

Breanne Fong

From: [Pomai Gutierrez](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Testimony in opposition to agenda item D-4
Date: Wednesday, November 6, 2024 4:35:14 PM

Aloha Chair Chang and Members of the Board of Land and Natural Resources,

My name is Pōmaika`i Gutierrez and I strongly OPPOSE the recommendation in agenda item D-4.

The proposed long-term disposition in this agenda item is premature and threatens to only create more conflict and uncertainty over Maui's water resources. The proposal would authorize more water to be diverted than would be available after the Water Commission's amended interim instream flow standards are implemented; ignores the still-unfulfilled need to implement these flow standards, which are critical to stopping the ongoing harm being inflicted on East Maui's streams, watersheds, and estuaries; turns a blind eye to the significant and ongoing waste of public trust water, including from leaky unlined reservoirs; and fails to give the 'Aha Wai o Maui Hikina a fair chance at negotiating for the disposition of Maui Hikina's streams, before launching a contested case hearing over a potential water license to a real estate investment trust and Canadian pension fund with no duty to uphold the public trust or the public's interests in their control over Maui's water resources.

Please do not allow this recommendation to move forward, which would allow private corporate entities to continue to flaunt the public trust and state water code - including the Water Commission's still-outstanding orders - while wasting potentially millions of gallons of water per day with no consequence.

Mahalo nui for your consideration of this testimony.

Sincerely,

Pōmaika`i Gutierrez

From: [Michele A. Halligan](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] PLEASE DO THE RIGHT THING and protect Maui's precious water!
Date: Wednesday, November 6, 2024 9:55:41 AM

Aloha Chair Chang and Members of the Board of Land and Natural Resources,

My name is **Michele Halligan**, and I strongly OPPOSE the recommendation in agenda item D-4.

The proposed long-term disposition in this agenda item is premature and threatens to only create more conflict and uncertainty over Maui's water resources.

The proposal

- * would authorize more water to be diverted than would be available after the Water Commission's amended interim instream flow standards are implemented;

- * ignores the still-unfulfilled need to implement these flow standards, which are critical to stopping the ongoing harm being inflicted on East Maui's streams, watersheds, and estuaries;

- * turns a blind eye to the significant and ongoing waste of public trust water, including from leaky unlined reservoirs; and

- * fails to give the 'Aha Wai o Maui Hikina a fair chance at negotiating for the disposition of Maui Hikina's streams, **before** launching a contested case hearing over a potential water license to a real estate investment trust and Canadian pension fund **with no duty to uphold the public trust or the public's interests in their control over Maui's water resources.**

PLEASE do not allow this recommendation to move forward; it would allow private corporate entities to continue to flaunt the public trust and state water code - including the Water Commission's still-outstanding orders - while wasting potentially millions of gallons of water per day with no consequence.

Mahalo nui for your consideration of this testimony.

Sincerely,

[Michele Halligan]

From: [John Helly](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Request to Provide Testimony on D. Land Division / Item 4: Decision Making
Date: Wednesday, November 6, 2024 5:08:16 PM

4. Decision Making Regarding:

Recommendation to hold a contested case hearing over the proposed disposition of a water license by public auction or by direct negotiation to the County of Maui covering the diversion of public surface water not to exceed an amount of 85.23 million gallons per day from Koolau Forest Reserve, Island of Maui, Hawai'i ("proposed License" or "License").

Pursuant to Section 92-5(a) (4), Hawaii Revised Statutes (HRS), the Board may go into Executive Session in order to consult with its attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities.

John Helly / jjh@hellylab.net / 808 205 9882 / 760 840 8660

From: [Jaimie Hijii](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Testimony in opposition to agenda item D-4
Date: Wednesday, November 6, 2024 12:01:00 PM

Aloha Chair Chang and Members of the Board of Land and Natural Resources,

My name is Jaimie Hijii and I strongly OPPOSE the recommendation in agenda item D-4.

The proposed long-term disposition in this agenda item is premature and threatens to only create more conflict and uncertainty over Maui's water resources. The proposal would authorize more water to be diverted than would be available after the Water Commission's amended interim instream flow standards are implemented; ignores the still-unfulfilled need to implement these flow standards, which are critical to stopping the ongoing harm being inflicted on East Maui's streams, watersheds, and estuaries; turns a blind eye to the significant and ongoing waste of public trust water, including from leaky unlined reservoirs; and fails to give the 'Aha Wai o Maui Hikina a fair chance at negotiating for the disposition of Maui Hikina's streams, before launching a contested case hearing over a potential water license to a real estate investment trust and Canadian pension fund with no duty to uphold the public trust or the public's interests in their control over Maui's water resources.

Please do not allow this recommendation to move forward, which would allow private corporate entities to continue to flaunt the public trust and state water code - including the Water Commission's still-outstanding orders - while wasting potentially millions of gallons of water per day with no consequence.

Mahalo nui for your consideration of this testimony.

Sincerely,

Jaimie Hijii

--

Jaimie N. Hijii
Tsang Stream Lab
Natural Resources and Environmental Management M.S. Student
University of Hawai'i at Mānoa

November 6, 2024

Chairperson Dawn Chang
Commission on Water Resource Management
Department of Land and Natural Resources
1151 Punchbowl St, Room 227
Honolulu, HI 96813

Subject: Testimony Opposing Agenda Item D-4

Aloha Chairperson Chang and Members of the Board of Land and Natural Resources:

My name is Shay Chan Hodges and I OPPOSE this attempt to fast track the giveaway of public trust water resources to a foreign crown corporation after our community has worked diligently and democratically to protect East Maui water for decades.

I am a Haiku resident who became involved in East Maui water issues after I was appointed to the Maui County Water Board in 2016. I was Vice Chair and Chair from 2018 to 2021.

On December 17, 2018, Mahi Pono, LLC purchased 41,000 acres of Alexander & Baldwin (A&B) land for \$262 million and 50% of the EMI water system for \$2.7 million – 11 days after it registered as a foreign entity in the state of Hawaii. A week later, Mahi Pono Holdings, LLC, which is the only member of Mahi Pono, LLC, also registered as a foreign entity in Hawaii.

Mahi Pono Holdings, LLC's sole member is the Canadian Public Sector Pension Investment Board (PSP). PSP is a \$190 billion corporation that invests the pension funds of the Canadian Forces, the Royal Canadian Mounted Police, the federal public service, and the Reserve Force.

In 2019, the Maui County Water Board repeatedly invited Mahi Pono to come to its meetings and answer board member questions about their intentions, with no success.

Meanwhile, Alexander & Baldwin lobbied to pass HB 1326, in an effort to extend A&B/Mahi Pono one-year water leases for seven years. The bill was opposed by environmental groups, taro farmers and Native Hawaiians. Right before the end of the session, Senate Water and Land Chair Kai Kahele amended the bill to exclude A&B, effectively killing it.

Had HB1326 passed, it would have also helped protect A&B from paying Mahi Pono millions of dollars in penalties. Per SEC documents, besides agreeing to sell its share of EMI to Mahi Pono at a future date, A&B agreed to rebate Mahi Pono up to \$62M if a long-term lease for more than 30 million gallons per day was not secured by 2027.

Five years later, Mahi Pono still does not have that long-term lease. A&B only has three more years before the \$62 million rebate is due.

A month after HB 1326 died -- on May 2, 2019 -- then-Senator Kahele wrote to Maui County Mayor Mike Victorino, copying then-Department of Land and Natural Resources Director Suzanne Case, then-Attorney General Clair Connors, then-Director of Water Supply Jeff Pearson, several state senators and Mahi Pono executives, recommending that the County of Maui immediately submit a water lease application to DLNR, noting that:

Doing so now will provide the Board of Land and Natural Resources ample time to review and issue a revocable permit to the County of Maui and DWS by the end of this year so that Maui County secures its own, independent authority to continue to provide its residents with access to diverted surface water imported from state lands in East Maui via the EMI aqueduct system.

Domestic water use is a protected "public trust purpose" and I am confident that as the necessary application requirements are satisfied, the County of Maui and DWS will secure a long-term water lease from the State of Hawaii.

I truly believe it is in the best interest of the County of Maui to secure its own long-term water lease with the State of Hawaii and to free itself from its dependency on private, commercial, third-party operators who are not duty bound, as we are, to uphold the state's public trust obligation to conserve and protect Hawaii's natural resources for the benefit of present and future generations.

Two months later, the Maui County Board of Water Supply voted to form a Temporary Investigative Group, which included myself, and board members Toni Eaton, and Norman Franco to “*explore the feasibility of purchasing and maintaining the EMI water delivery system and examine other alternatives for ensuring that the people of Maui County have authority over the delivery of water, which is a public trust.*”

In December 2019, the Temporary Investigative Group reached the same conclusion as then-Senator Kahele, that Maui County should immediately apply for a long-term lease for the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas, in order to protect the public trust.

When Mayor Victorino did not act on either Senator Kahele’s nor the Board of Water Supply’s recommendations for two years, Maui County Council Member Shane Sinenci, then Chair of the Agriculture and Public Trust (APT) Committee, invited Department of Land and Natural Resources Special Projects Coordinator Ian Hirokawa to describe the auction process for the East Maui Water leases to APT members. Mr. Hirokawa told the Council Members:

*“...if there is an interest by the County to expand the scope of their involvement in this, I think they should reach out to us as soon as possible. Because again, I don’t think having the County as a competing bidder is really in anybody’s best interest, you know, where public and private is competing. I think we want to resolve it one way or the other beforehand. So I mean, I hope that answers your question. But yeah, we could...you know, if the County says well, I want the system, then I think we’d have to say, okay, wait, **let’s at least hold and address this, you know, first, before we rush it to...or, you know, bring it to public auction, so...**”*

Following that presentation, in January 2022, the Maui County Council passed a resolution to formally request the leases from BLNR. Unfortunately, DLNR did not respond to Council Chair Alice Lee’s request to move forward on the leases.

Consequently, in July 2022, the Maui County Council approved the East Maui Water Authority Charter Amendment, which was overwhelmingly passed by voters the following November.

Though implementation of the Water Authority was delayed due to the Lahaina fires, the first meeting of the East Maui Regional Community Board, also known as "Aha Hui O Maui Hikina", was held in February 2023, and the Board has been working diligently ever since. Just-this week, the new Director Gina Young was sworn in.

As is clear from the foregoing, our Maui community has worked persistently and meticulously for the last six years to create an innovative, community-based administrative structure that can care for the watershed, repair and maintain the irrigation system, and protect the public trust from outside interests who seek to profit from our water.

We have also had support from others throughout North America who are aware of PSP’s record.

Canada’s Devlin Kuyek, who works for GRAIN, a nonprofit dedicated to strengthening local people’s control over their food resources, submitted testimony to the Board of Land and Natural Resources in September, where he described Canadian Pension Fund PSP Investment’s record of international water grabs, from California to Spain, Morocco, and Peru, and the catastrophic consequences to water systems and communities.

At the September East Water Authority meeting, James Infantino, the National Pension Officer of the 200,000-member PSAC union whose pension funds are managed by PSP Investments, had one message for Water Authority members and the community: “Don’t let PSP investments anywhere near this long term lease.” In May 2021, PSAC included the Mahi Pono investment in its press release describing PSAC’s fight for pension plans to move to ethical investing, noting that “pension funds should not be used for the exploitation of marginalized and vulnerable people, and must be stopped from investing in initiatives that undermine public wellbeing.”

Reporters from around the country and world have also been cataloguing PSP’s water record. According to Bloomberg, as a result of PSP drilling six wells of more than 1,000 feet each on almond lands along

California's Aqueduct during California droughts, the land sank from 1 inch to 5 inches a year from 2020 through 2022.

It is, therefore, remarkable that the State of Hawaii's Board of Land and Natural Resources is intending to breach its duties under the public trust doctrine in order to undermine six years of work by the voters of Maui County and the 'Aha Wai o Maui Hikina, on behalf of a foreign entity with a record of destruction of water systems and communities.

This agenda item is particularly egregious given the decades of community legal battles to return water to the streams of East Maui and protect them for future generations that preceded this most recent community effort.

Please defer this **Item D-4** and put the public and public trust uses of water before the profits of a \$190 billion foreign corporation.

Mahalo.



Shay Chan Hodges

Haiku, Maui, Hawaii

From: [Kendra Hunter](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Water Rights
Date: Wednesday, November 6, 2024 12:24:42 PM

Aloha Chair Chang and Members of the Board of Land and Natural Resources,

My name is Kendra Rose Hunter and I strongly and full heartedly OPPOSE the recommendation in agenda item D-4.

The proposed long-term disposition in this agenda item is premature and threatens to only create more conflict and uncertainty over Maui's water resources. The proposal would authorize more water to be diverted than would be available after the Water Commission's amended interim instream flow standards are implemented; ignores the still-unfulfilled need to implement these flow standards, which are critical to stopping the ongoing harm being inflicted on East Maui's streams, watersheds, and estuaries; turns a blind eye to the significant and ongoing waste of public trust water, including from leaky unlined reservoirs; and fails to give the 'Aha Wai o Maui Hikina a fair chance at negotiating for the disposition of Maui Hikina's streams, before launching a contested case hearing over a potential water license to a real estate investment trust and Canadian pension fund with no duty to uphold the public trust or the public's interests in their control over Maui's water resources.

This is illegal and I am stunned that our Governor aids and abets the thievery of our public waters for profit.

Please do not allow this recommendation to move forward, which would allow private corporate entities to continue to flaunt the public trust and state water code!

Mahalo nui for your consideration of this testimony.

Sincerely, Kendra Rose Hunter



Restore the Commons

Friday, November 8, 2024

Board of Land and Natural Resources

Agenda Item D-4

Position: Oppose

Me ke Aloha, Chair and Members of the Board of Land Natural Resources

While it is constitutionally appropriate for the Land Board to lease State lands, it's determination of the value and use of available water resources is impertinent. That is the province of the Commission on Water Resource Management, which has the unenviable task of determining necessary flows of water upon the land. To date, it has only determined interim minimum flows, not optimum flows to the benefit of these public trust lands and their potential reasonable and beneficial purposes, including traditional Hawaiian values in the 'āina.

The value of the land in this case is entirely dependent upon the water to be diverted from it to other, non- public trust, private lands. Commercial use of such water is subject to higher scrutiny than the public trust uses outlined by the Supreme Court. The land value to the community – “the State” – is in the use of the land itself, largely based upon its ecological conditions, given all natural resources it contains, pre-eminently the value of the land as served by undiverted natural flowing streams. Hence the value of the proposed lease is entirely dependent upon what the Water Commission may deem available for use other than in the watershed. The only appropriate current action by the Land Board is a determination of the value of these lands in their natural undiverted state. The fact that diversions were appropriated by colonial usurpers has no bearing on the current public trust of the people of Hawaii.

The Land Board is the inappropriate venue for the proposed action, prior to appropriate action having been taken by the Water Commission. In due time, the lease of these lands must be evaluated on the basis of their diminished value with proposed water diversions.

Mahalo for the opportunity to address this issue,

/s/ Charley Ice, Hoa'āina

Hydrologist, Commission on Water Resource Management 25 years (retired)

Planner, Hawaiian Home Lands (10 years), Hawaiian rights specialist and Chair's liaison to the Water Commission

From: [Jodee Inouye-Agsalog](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Opposition to item D4, BLNR Agenda for November 8, 2024
Date: Wednesday, November 6, 2024 8:02:10 PM

Chair Chang and Members of the Board of Land and Natural Resources,

My name is Jodee Inouye-Agsalog and I OPPOSE this attempt to fast track the giveaway of public trust water resources to a private company, as you propose doing in item D4. If Alexander & Baldwin isn't able to fulfill their promise to a foreign company to secure public water, and has to pay back \$62 million by 2026, that is not your problem or the problem of the public.

The BLNR should give the voters of Maui County and the 'Aha Wai o Maui Hikina a fair chance at negotiating for the disposition of Maui Hikina's streams, before launching a contested case hearing over a potential water license to a foreign company. Entering into a contested case will prevent the County from having good faith negotiations with you.

There are so many ways that this is premature and harmful. BLNR should not move forward with a contested case before you have an appraisal. BLNR should not move forward with a contested case before you have reserved water for DHHL.

Ultimately, if you act on this proposal, you would be breaching your duties under the public trust doctrine to give priority to public interests and uses of the waters of this island. This item needs to be deferred and you need to put the public and public trust uses of water before campaign donors who are foreign corporations.

Jodee Inouye-Agsalog

From: [corey kanae](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] D 4
Date: Wednesday, November 6, 2024 10:11:10 AM

Aloha Board Members,

My name is Alika Kanae, and I was born and raised on Maui. I am requesting that the board move forward with issuing a long-term water lease to ensure that we can continue to secure food production on our island. With the growing demand for local food and the challenges we face in achieving sustainability, it is essential that we have a stable and reliable water supply to support agriculture. Let's take this critical step forward to strengthen our community's food security and future.

Mahalo for your consideration.
Sent from my iPhone

From: [Earl Kim](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Testimony for water commission
Date: Wednesday, November 6, 2024 3:15:46 PM

Aloha Chair Chang and Members of the Board of Land and Natural Resources,

My name is Earl Kim and I strongly OPPOSE the recommendation in agenda item D-4.

The proposed long-term disposition in this agenda item is premature and threatens to only create more conflict and uncertainty over Maui's water resources. The proposal would authorize more water to be diverted than would be available after the Water Commission's amended interim instream flow standards are implemented; ignores the still-unfulfilled need to implement these flow standards, which are critical to stopping the ongoing harm being inflicted on East Maui's streams, watersheds, and estuaries; turns a blind eye to the significant and ongoing waste of public trust water, including from leaky unlined reservoirs; and fails to give the 'Aha Wai o Maui Hikina a fair chance at negotiating for the disposition of Maui Hikina's streams, before launching a contested case hearing over a potential water license to a real estate investment trust and Canadian pension fund with no duty to uphold the public trust or the public's interests in their control over Maui's water resources.

Please do not allow this recommendation to move forward, which would allow private corporate entities to continue to flaunt the public trust and state water code - including the Water Commission's still-outstanding orders - while wasting potentially millions of gallons of water per day with no consequence.

Mahalo nui for your consideration of this testimony.

Sincerely,
Earl J Kim

From: [Johann Lall](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Testimony on Item D-4 Friday Nov 8th 2024
Date: Wednesday, November 6, 2024 7:00:27 PM

Aloha, I'm opposed to D-4 to grant a contested case for East Maui water lease. I believe the contested case may result in a lease being granted to Mahi Pono without proper notice and review by East Maui Water Authority. I watched a portion of the meeting that was attended by Chair Dawn Chang, and my understanding was that the process would be postponed so that the newly formed EMWA would have more time to review this.

There are many considerations for both BLNR and EMWA, including protecting the water resource as a public trust, providing enough streamflow for Native Hawaiian farmers, and maintaining enough streamflow for the health of the riverine and coastal ecosystems. I don't believe the process should be rushed to benefit Mahi Pono.

Mahalo,

Johann Peter Lall
Kama'ole, Kihiei, HI

From: [matt Lau](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL]
Date: Wednesday, November 6, 2024 9:47:57 AM

Aloha Chair Chang and Members of the Board of Land and Natural Resources,

My name is Matt L. and I strongly OPPOSE the recommendation in agenda item D-4.

The proposed long-term disposition in this agenda item is premature and threatens to only create more conflict and uncertainty over Maui's water resources. The proposal would authorize more water to be diverted than would be available after the Water Commission's amended interim instream flow standards are implemented; ignores the still-unfulfilled need to implement these flow standards, which are critical to stopping the ongoing harm being inflicted on East Maui's streams, watersheds, and estuaries; turns a blind eye to the significant and ongoing waste of public trust water, including from leaky unlined reservoirs; and fails to give the 'Aha Wai o Maui Hikina a fair chance at negotiating for the disposition of Maui Hikina's streams, before launching a contested case hearing over a potential water license to a real estate investment trust and Canadian pension fund with no duty to uphold the public trust or the public's interests in their control over Maui's water resources. Yet another way way are selling out our natural resources that is so important to the sustainability (please look up the definition of this word) of this island which is an integral provider in this Aloha State.

Please do not allow this recommendation to move forward, which would allow private corporate entities to continue to flaunt the public trust and state water code - including the Water Commission's still-outstanding orders - while wasting potentially millions of gallons of water per day with no consequence.

I appreciate your time and consideration.

Aloha,
Matt L

From: [Tiffany Lindsay](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Water Belongs to Everyone
Date: Wednesday, November 6, 2024 12:50:43 PM

Aloha Chair Chang and Members of the Board of Land and Natural Resources,

My name is Tiffany Lindsay and I strongly OPPOSE the recommendation in agenda item D-4.

The proposed long-term disposition in this agenda item is premature and threatens to only create more conflict and uncertainty over Maui's water resources. The proposal would authorize more water to be diverted than would be available after the Water Commission's amended interim instream flow standards are implemented; ignores the still-unfulfilled need to implement these flow standards, which are critical to stopping the ongoing harm being inflicted on East Maui's streams, watersheds, and estuaries; turns a blind eye to the significant and ongoing waste of public trust water, including from leaky unlined reservoirs; and fails to give the 'Aha Wai o Maui Hikina a fair chance at negotiating for the disposition of Maui Hikina's streams, before launching a contested case hearing over a potential water license to a real estate investment trust and Canadian pension fund with no duty to uphold the public trust or the public's interests in their control over Maui's water resources.

Please do not allow this recommendation to move forward, which would allow private corporate entities to continue to flaunt the public trust and state water code - including the Water Commission's still-outstanding orders - while wasting potentially millions of gallons of water per day with no consequence.

Mahalo nui for your consideration of this testimony.

Sincerely,

Tiffany Lindsay

From: [Kaninau Mariano](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] D4
Date: Wednesday, November 6, 2024 10:31:39 AM

Aloha Board Members, My name is Kaninau Mariano, and I was born and raised on Molokai. I currently work in agriculture, and I fully support the board moving forward with a long-term water lease. It brings me great pride to see our island becoming more sustainable, and growing local food for future generations is incredibly important to my family and community. Securing reliable water resources will help ensure the continued success of our agricultural efforts and strengthen our island's future. Mahalo for your consideration.

From: [Marty Martins](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Testimony in Opposition to Agenda Item D-4
Date: Wednesday, November 6, 2024 10:01:14 PM

Aloha Board of Land and Natural Resources,

In 2022, the East Maui Water Authority was established by a charter amendment overwhelmingly approved by Maui voters.

Just two months ago, the people of Maui successfully opposed a proposal to allocate over 85 million gallons of East Maui's water per day for 30 years to private corporations (Alexander & Baldwin and Mahi Pono). In response, BLNR Chair Chang withdrew the proposal.

Now the BLNR is considering a proposal that would allocate more water than the Water Commission's updated interim instream flow standards would allow, fails to incentivize the implementation of those standards, and bypasses negotiations with the East Maui Water Authority before considering the issuance of a long-term water license to private corporations.

I strongly oppose this renewed effort to bypass the East Maui Water Authority and the will of the people.

Respectfully,
'Aikake Martins
Kīhei

TO: BLNR Chair Dawn Chang and BLNR Board members November 5, 2024
FROM: Professor Richard “Dick” Mayer dickmayer@earthlink.net
RE: Nov-8--2024 BLNR MEETING -- Agenda Item D-4, East Maui Water Lease

The Upcountry Maui community has long suffered from an unreliable water supply that impacts our Hawaiian Homelands, residents, and farmers. Every summer, we face significant water restrictions due to inadequate resources.

Our water is and has been controlled by off-island private entities for over 150 years - East Maui Irrigation Company, a subsidiary of Honolulu-based, A&B (a Real Estate Investment Trust), and now Public Sector Pension Investment (PSP), a foreign pension fund.

I strongly urge you to negotiate and facilitate the transfer of the East Maui watershed lease(s) to the East Maui Community Water Authority. This would place control of our vital water resources with a local, public entity guided by the Public Trust doctrine rather than by private, foreign profit motives. The East Maui Water Authority, as an agency of Maui County, will partner with the Maui Department of Water Supply to:

1. Help assist in implementing and enforcing CWRM “stream flow requirements”.
2. Ensure adequate water is diverted from the transmission system
3. Provide the required water for the Central Maui (Mahi Pono) agricultural operations
4. Treat water at Kamole Weir and deliver a dependable supply to the Upcountry District
5. Reserve and supply the necessary water for the upcountry and central Maui HHL lands
6. Manage and upgrade the State’s Koolau Watershed

Chair Chang, the DLNR, and the BLNR have the power to facilitate this transfer and work with the County. **A public auction, before first negotiating with Maui's Water Authority, would be premature.**

Please respect our Maui County voters, residents, and farmers, who voted overwhelmingly to establish the Water Authority to manage the East Maui water source. Our community's future depends on sustainable, locally controlled water resources.

We look forward to your timely response on this pressing issue.

Mahalo,
Prof. Richard D. Mayer

CC Governor Josh Green
Chair, Jonathan Scheuer and members, East Maui Regional Community Board
Director Gina Young, East Maui Regional Community Board
Director John Stufflebean, P.E., Maui DWS
Maui County Mayor Richard Bissen
Councilmember Shane Sinenci
Councilmember Yuki Lei Sugimura
Chair Donna Sterling, Maui Board of Water Supply

From: [Daniel Moore](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Opposition; D-4
Date: Wednesday, November 6, 2024 10:06:27 AM

Aloha Chair Chang and Members of the Board of Land and Natural Resources,

This is Dan from 96753 writing you, and I strongly OPPOSE the recommendation in agenda item D-4.

The proposed long-term disposition in this agenda item is premature and threatens to only create more conflict and uncertainty over Maui's water resources. The proposal would authorize more water to be diverted than would be available after the Water Commission's amended interim instream flow standards are implemented; ignores the still-unfulfilled need to implement these flow standards, which are critical to stopping the ongoing harm being inflicted on East Maui's streams, watersheds, and estuaries; turns a blind eye to the significant and ongoing waste of public trust water, including from leaky unlined reservoirs; and fails to give the 'Aha Wai o Maui Hikina a fair chance at negotiating for the disposition of Maui Hikina's streams, before launching a contested case hearing over a potential water license to a real estate investment trust and Canadian pension fund with no duty to uphold the public trust or the public's interests in their control over Maui's water resources.

Please do not allow this recommendation to move forward as is. It would allow private corporate entities to continue to flaunt the public trust and the state water code - including the Water Commission's still-outstanding orders - while wasting potentially millions of gallons of water per day with no legal consequence.

Mahalo nui for your consideration of this testimony.

Sincerely,
Daniel Moore



Native Hawaiian LEGAL CORPORATION

1164 Bishop Street, Suite 1205 • Honolulu, Hawai'i 96813
Phone (808) 521-2302 • Fax (808) 537-4268 • www.nativehawaiianlegalcorp.org



BOARD OF LAND AND NATURAL RESOURCES MEETING Relating to Agenda Item D-4

Decision Making Regarding:

Recommendation to hold a contested case hearing over the proposed disposition of a water license by public auction or by direct negotiation to the County of Maui covering the diversion of public surface water not to exceed an amount of 85.23 million gallons per day from Koolau Forest Reserve, Island of Maui, Hawai'i ("proposed License" or "License")

November 8, 2024

9:00 a.m.

DLNR Boardroom

Aloha e Chair Chang and members of the Board of Land and Natural Resources:

On behalf of Nā Moku Aupuni O Ko'olau Hui, the Native Hawaiian Legal Corporation offers the following testimony on Agenda Item D-4.

A contested case hearing is clearly necessary to address the potential long-term disposition of millions of gallons of water from east Maui streams. However, the Board should not take any forward steps toward a long-term license until the current permittees address their outstanding legal obligations and this Board has ensured it has met its affirmative duty to protect the public trust.

I. Legal Requirements Must Be Met Before Discussion of a Long-Term Water License

Commencing discussions on a license and the long-term disposition of water before certain legal requirements are met is premature and contradicts the state's affirmative trust duties to protect the public trust. *See* Haw. Const. Art. XI, § 1 & Art. XII, § 7; *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.").

As trustee, the Board must ensure that A&B/EMI meet their kuleana before moving forward with discussions on a long-term disposition to motivate them to finally and fully meet these requirements. First, the Board must ensure that A&B/EMI address their remaining obligations under the Commission on Water Resource Management's ("CWRM's") orders setting interim instream flow standards ("IIFS") for dozens of east Maui streams. In 2018, CWRM established IIFS for 24 east Maui streams, including 90-percent habitat recovery for seven streams and the return of full natural flows to 10 streams that had been diverted for over a century. In 2022,

CWRM amended IIFS for another dozen streams in the Huelo region of east Maui. Both of CWRM's orders require modifications to diversion structures, which are critical to the community's uses of these streams (and Nā Moku members' traditional and customary rights) as well as to the species who live in them. Years have passed, and A&B/EMI continue to obtain annual revocable permits authorizing diversion of these streams even though there are still a number of diversion structures still awaiting modification. Second, the Board must also ensure that A&B/EMI have taken the necessary steps to minimize system losses. A&B/EMI accepted their revocable permit based on the condition that there shall be no waste of water. However, A&B/EMI have not acted to minimize system losses by lining reservoirs and ditches. *In re 'Īao Ground Water Mgmt. Area High-Level Source Water Use Permit Applications & Petition*, 128 Hawai'i 228, 257, 287 P.3d 129, 158 (2012) ("The value of diverting water, only to lose the water due to avoidable or unreasonable circumstances is unlikely to outweigh the value of retaining the water for instream uses."). Compliance with these outstanding obligations not only protects the public trust but also ensures that the parties enter into a contested case hearing with a solid baseline of facts critical to the Board's decision-making on the long-term disposition of water.

Finally, the Board must finish negotiations with 'Aha Wai o Maui Hikina, the County's Water Authority that Maui residents voted for to "investigate, acquire, manage, and control water collection and delivery systems" of water in Nāhiku, Ke'anae, Honomanū, and Huelo, before taking steps to give water to a private corporation. See Hawai'i Revised Statutes ("HRS") § 171-95(a)(3). In September, this agenda item was deferred at the request of Mayor Richard Bissen "to allow the County of Maui and other interested parties to explore possible long-term partnership opportunities." However, just six weeks later – and without any indication that negotiations with 'Aha Wai o Maui Hikina have been exhausted – the Board is again discussing the proposed license which is clearly structured for the benefit of a private entity. Prioritizing private use over public purpose is inconsistent with the principles of the public trust doctrine and constitutes a breach of trust. See *Carmichael v. Bd. of Land and Nat. Resources*, 150 Hawai'i 547, 566, 506 P.3d 211, 230 n. 33 (2022) (" [P]rivate commercial use' is not 'a protected trust purpose.'")(citing *In Re Water Use Permit Applications*, 94 Hawai'i 97, 138, 9 P.3d 409, 450 (2000) ("*Waiāhole*").

Moving forward with a contested case hearing on the proposed license without first ensuring public trust purposes are properly protected at the outset only invites future abuses. Scheduling a contested case hearing on this issuance of a long-term license is premature.

II. The Contested Case Hearing

The staff submittal improperly attempts to exclude certain issues from the contested case hearing. Limiting the scope of the hearing to issues relevant to the proposed license that have not been previously "adjudicated"¹ prejudices the issues to be considered at the contested case hearing without consideration of the arguments set forth in future petitions to intervene and deprives those petitioners who were never parties to any prior contested case hearings on the existing revocable permits (which substantively are not the same as the long-term license) of

¹ No final decisions have been issued in any of the litigation addressing the revocable permits.

their opportunity to be heard on those issues. That is the antithesis of due process. And it contradicts the board's continuing public trust duty to reassess allocations on public trust uses. See *Waiāhole*, 94 Hawai'i at 149, 9 P.3d at 461.

The contested case hearing must address all relevant issues and, as mentioned above, include data that will only exist after modifications to diversions and reservoirs are complete.

III. The Proposed License is Problematic

The proposed license itself presents problems, which Nā Moku intends to explore further at a future contested case hearing. Laws related to disposition of water from state lands obligate this board – as trustee of the public trust resources of this state – to employ a high level of scrutiny whenever its actions impact public trust resources. See *Waiāhole*, 94 Hawai'i at 143, 9 P.3d at 455 (mandating that trustees “must take the initiative in considering, protecting, and advancing public rights in the resource at every stage of the planning and decision-making process.”); *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) (recognizing “an affirmative duty to preserve and protect the State's water resources”); *Ching v. Case*, 145 Hawai'i 148, 152, 449 P.3d 1146, 1150 (2019) (recognizing “an obligation to protect and preserve the resources however they are utilized”).

First, **the proposed license authorizes the extraction of far too much water from east Maui.** 3,764 gallons per day is more than Mahi Pono has ever used on its farms. The proposed license also fails to consider any other water sources – including groundwater, which is a viable option. Additionally, it allows automatic increases based on the amount of acres planted without any further scrutiny by this board.² These provisions give far too much authority for an excessive period of time³ to entities that, given their long history of diversion and mismanagement, have not proven to be good water stewards.

Second, **the proposed license promotes passive management – the opposite of the board's duties under the public trust.** The board is already obligated to ensure that lessees properly maintain infrastructure and prevent wasting water. As mentioned above, improvements to the water delivery system should always be a condition of any water license to maximize efficiency and minimize waste along with any other necessary conditions to ensure watershed protection. See *Kauai Springs*, 133 Hawai'i at 175, 324 P.3d at 985 (“[T]he applicant must implement reasonable measures to mitigate the cumulative impact of existing and proposed diversions on trust purposes, if the proposed use is to be approved.”). The proposed license, however, allows for excessive system losses and does not give the future licensee a deadline by which to line the reservoirs that capture east Maui stream flow. It also defers to a later date the approval of a watershed management plan, a preliminary requirement for lease renewal under HRS § 171-58(f) (“The board shall not renew any lease of water rights without the foregoing

² See Exh. A at 2 (emphasis added); see also *id.* ¶11.

³ The length of the license itself should also be reconsidered. The average life span of a successful business is 15-20 years. A new long term license to a private corporation should not exceed 20 years.

covenant or a watershed management plan.”), as well as a cost sharing agreement for stream monitoring equipment, eliminating any transparency or the ability for public input.⁴ Further, the proposed license gives far too much deference to claims made by the future licensee as to how much acreage has been planted (as mentioned above) and offers a rent credit for the licensee to take management actions it should have already been required to do **prior** to negotiating or otherwise issuing any new license agreement.⁵ Given the history of large-scale diversions in Hawai‘i, the cost of maintenance and any necessary upgrades to a ditch system is necessarily the kuleana of the diverter. A licensee should not be rewarded with rent credits for its failure to maintain and/or upgrade a currently inefficient system that has degraded over time under that licensee’s watch. Rent credits like the one proposed simply incentivizes diverters’ complacency to the detriment of our water resources and, effectively, supports the status quo. Passive management of our state’s scarce and commercially coveted water resources directly contradicts the board’s public trust duties.

Finally, as discussed above, the proposed license was clearly written for the benefit of a private corporation, which ignores the interest of ‘Aha Wai o Maui Hikina and the public’s superior rights to water. The language of the license itself explicitly references the “Licensee’s diversified agricultural, historical industrial and non-agricultural uses **existing at the time of the execution of this License[.]**” which could only apply to the existing permittees, A&B/EMI (and Mahi Pono).⁶ This subverts the whole notion of the public trust and potentially dictates the outcome of the future contested case hearing.

Mahalo,



Ashley K. Obrey, Senior Staff Attorney
For Nā Moku Aupuni O Ko‘olau Hui

⁴ See *id.* ¶39.

⁵ See *id.* ¶44 (“**If the Licensee provides infrastructure for the purpose of reducing system losses**, such as lining reservoirs containing the Water Resource, **the Licensor may approve a reduction or waiver of licensee rent for up to a period of twenty (20) years[.]**”) (emphases added); see also *id.* ¶43 (“Licensee shall complete the removal of diversions as required by the Commission on Water Resources [stet] that affect the streams that the Water Resource may be diverted from this License no later than ____.”); ¶45 (“Licensee shall cleanup trash and debris from areas that are accessible and close to streams[.]”).

⁶ Exh. A at 2 (emphasis added); see also *id.* at ¶11.

From: [Bobbie Patnode](#)
To: [DLNR.BLNR.Testimony](#)
Cc: [Board.EMRCB@co.maui.hi.us](#); [DLNR.CO.PublicDLNR](#); [Green, Josh B](#); [Ankele-Yamashita, Michelle E](#); [Gina M. Young](#); [john.stufflebean@mauicounty.gov](#); [Richard Bissen](#); [Shane M. Sinenci](#); [Yuki Lei Sugimura](#); [Sherilyn Otsubo](#)
Subject: [EXTERNAL] Kula Community Association Testimony regarding Item D.4 on BLNR 11-8-24 Agenda
Date: Wednesday, November 6, 2024 12:56:48 PM

TO: BLNR Chair Dawn Chang and BLNR Board members

November 6, 2024

FROM: Bobbie Patnode, President, Kula Community Association bobbiepatnode@fastmail.fm

RE: Agenda Item D-4, East Maui Water Lease Nov. 8-2024 BLNR MEETING

The Kula Community Association received word that the BLNR plans to hold a meeting on November 8 to decide whether a contested case hearing should be conducted to discuss the decision-making method for granting a lease to take water from East Maui's Koolau watershed. The hearing would be used to decide between negotiations or an auction.

The results of that contested case hearing would be the foundation for the most important decision that the BLNR has ever made for Maui County. It will determine the control and distribution of Maui's major water source (the largest aquifer in the state) for the next 30 years. We have two problems with the agendized course of action.

#1 – Please reject the idea of holding a contested case hearing to decide whether to have negotiations or an auction. Please respect our Maui County voters, residents, and farmers, who voted overwhelmingly to establish the Water Authority to manage the East Maui water source. Our community's future depends on sustainable, locally controlled water resources.

Those affected by the results of the lease decision include:

A. East Maui residents and communities (the location of the watershed and source of the water; and the area with many kalo

farmers, fishermen, and numerous streams);

B. Upcountry residents and communities (the area that includes the Waiohuli Hawaiian Homelands interests; farmers and ranchers with sizeable agricultural operations; several large communities; two County Ag Parks; and about 40,000 residential water consumers;

C. Major Central Maui consumers of the East Maui water (Mahi Pono's diversified agricultural operations; and the proposed Pulehunui HHL development); and

D. Maui County's Department of Water Supply.

Chair Chang, the DLNR, and the BLNR have the power to facilitate this transfer and work with the County. A contested case hearing is certainly unusual and the whole procedure is confusing. Any contested case hearing or public auction before first negotiating with Maui's water authority is premature.

#2 -- A contested case hearing is certainly unusual and the whole procedure is confusing. **If a contested case is to be conducted,** it is proper, respectful and imperative for these hearings and this discussion to be held on Maui where Maui's most affected potential intervenors and testifiers would not be limited by travel costs and ability to express their concerns and share their mana'o.

Therefore, regarding item D.4, **we urge the BLNR and DLNR to convene any contested case hearings on Maui at a location where potential intervenors can provide testimony on this most important matter.**

If you decide to hold the contested case hearing, please have your November 8th Board of Land and Natural Resources decision

include a provision that shall require the contested case hearings to be conducted **on Maui at a location convenient to all of the potential intervenors** (governmental, corporate, community, and individuals). We also ask **that any contested case hearing be delayed to at least mid-2025** due to potential intervenors, once selected, needing to organize their testimony.

Thank you.

CC Governor Josh Green

Chair, Jonathan Scheuer and members, East Maui Regional
Community Board

Director Gina Young, East Maui Regional Community Board

Director John Stufflebean, P.E., Maui DWS

Maui County Mayor Richard Bissen

Councilmember Shane Sinenci

Councilmember Yuki Lei Sugimura

Chair Donna Sterling, Maui Board of Water Supply

From: [p.pearson](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Control of Maui's water resources
Date: Wednesday, November 6, 2024 9:13:49 AM

Aloha Chair Chang and Members of the Board of Land and Natural Resources,

My name is Tia Pearson and I strongly OPPOSE the recommendation in agenda item D-4.

The proposed long-term disposition in this agenda item is premature and threatens to only create more conflict and uncertainty over Maui's water resources. The proposal would authorize more water to be diverted than would be available after the Water Commission's amended interim instream flow standards are implemented; ignores the still-unfulfilled need to implement these flow standards, which are critical to stopping the ongoing harm being inflicted on East Maui's streams, watersheds, and estuaries; turns a blind eye to the significant and ongoing waste of public trust water, including from leaky unlined reservoirs; and fails to give the 'Aha Wai o Maui Hikina a fair chance at negotiating for the disposition of Maui Hikina's streams, before launching a contested case hearing over a potential water license to a real estate investment trust and Canadian pension fund with no duty to uphold the public trust or the public's interests in their control over Maui's water resources.

Please do not allow this recommendation to move forward, which would allow private corporate entities to continue to flaunt the public trust and state water code - including the Water Commission's still-outstanding orders - while wasting potentially millions of gallons of water per day with no consequence.

Mahalo nui for your consideration of this testimony.

Sincerely,
Tia Pearson

From: [Michelle Poppler](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Testimony in opposition to agenda item D-4
Date: Wednesday, November 6, 2024 11:55:07 PM

Aloha Chair Chang and Members of the Board of Land and Natural Resources,

My name is Michelle Poppler. I strongly OPPOSE the recommendation in agenda item D-4.

The proposed long-term disposition in this agenda item is premature and threatens to only create more conflict and uncertainty over Maui's water resources. The proposal would authorize more water to be diverted than would be available after the Water Commission's amended interim instream flow standards are implemented; ignores the still-unfulfilled need to implement these flow standards, which are critical to stopping the ongoing harm being inflicted on East Maui's streams, watersheds, and estuaries; turns a blind eye to the significant and ongoing waste of public trust water, including from leaky unlined reservoirs; and fails to give the 'Aha Wai o Maui Hikina a fair chance at negotiating for the disposition of Maui Hikina's streams, before launching a contested case hearing over a potential water license to a real estate investment trust and Canadian pension fund with no duty to uphold the public trust or the public's interests in their control over Maui's water resources.

Please do not allow this recommendation to move forward, which would allow private corporate entities to continue to flaunt the public trust and state water code - including the Water Commission's still-outstanding orders - while wasting potentially millions of gallons of water per day with no consequence.

Mahalo nui for your consideration of this testimony.

Sincerely,

Michelle Poppler

From: [Heather Quintana](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] 11/8 D-4 OPPOSITION testimony
Date: Wednesday, November 6, 2024 2:58:00 PM

Aloha Chair Chang and Members of the Board of Land and Natural Resources,

I am writing in strong opposition to agenda item D-4 on Friday Nov 8ths meeting.

I urge you to reject the proposal to issue A&B and Mahi Pono their 30 year license. Awarding this proposal would allocate more water than will be available after the implementation of the updated interim instream flow standards ordered by the Water Commission. Additionally it does not consider the East Maui County Water Authority.

Issuing a license of this kind to private corporate entities will have terrible consequences for the future of our home and our keiki.

Respectfully,

Heather Quintana

From: [Dylan Ramos](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Testimony: Opposition to Item D-4
Date: Wednesday, November 6, 2024 7:13:04 PM

Aloha Chair Chang and Members of the Board of Land and Natural Resources,

My name is Dylan Ramos and I strongly OPPOSE the recommendation in agenda item D-4.

The proposed long-term disposition in this agenda item is premature and threatens to only create more conflict and uncertainty over Maui's water resources. The proposal would authorize more water to be diverted than would be available after the Water Commission's amended interim instream flow standards are implemented; ignores the still-unfulfilled need to implement these flow standards, which are critical to stopping the ongoing harm being inflicted on East Maui's streams, watersheds, and estuaries; turns a blind eye to the significant and ongoing waste of public trust water, including from leaky unlined reservoirs; and fails to give the 'Aha Wai o Maui Hikina a fair chance at negotiating for the disposition of Maui Hikina's streams, before launching a contested case hearing over a potential water license to a real estate investment trust and Canadian pension fund with no duty to uphold the public trust or the public's interests in their control over Maui's water resources.

Please do not allow this recommendation to move forward, which would allow private corporate entities to continue to flaunt the public trust and state water code - including the Water Commission's still-outstanding orders - while wasting potentially millions of gallons of water per day with no consequence.

Mahalo nui for your consideration of this testimony.

Sincerely,
Dylan Ramos
96816

From: [Jack Rollens](#)
To: [DLNR, BLNR, Testimony](#)
Subject: [EXTERNAL] agenda item D-4.
Date: Wednesday, November 6, 2024 11:18:48 AM
Attachments: [jackrollens.vcf](#)

Aloha Chair Chang and Members of the Board of Land and Natural Resources,

My name is Jack A Rollens and have been a resident since 1972,

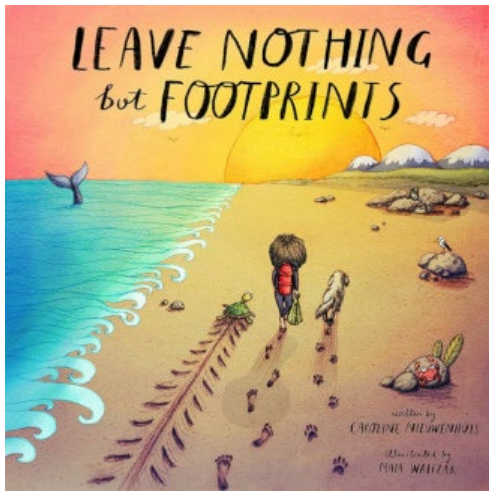
I strongly OPPOSE the recommendation in agenda item D-4.

The proposed long-term disposition in this agenda item is premature and threatens to only create more conflict and uncertainty over Maui's water resources. The proposal would authorize more water to be diverted than would be available after the Water Commission's amended interim instream flow standards are implemented; ignores the still-unfulfilled need to implement these flow standards, which are critical to stopping the ongoing harm being inflicted on East Maui's streams, watersheds, and estuaries; turns a blind eye to the significant and ongoing waste of public trust water, including from leaky unlined reservoirs; and fails to give the 'Aha Wai o Maui Hikina a fair chance at negotiating for the disposition of Maui Hikina's streams, before launching a contested case hearing over a potential water license to a real estate investment trust and Canadian pension fund with no duty to uphold the public trust or the public's interests in their control over Maui's water resources.

Please do not allow this recommendation to move forward, which would allow private corporate entities to continue to flaunt the public trust and state water code - including the Water Commission's still-outstanding orders - while wasting potentially millions of gallons of water per day with no consequence.
Mahalo nui for your consideration of this testimony.

Sincerely,

Jack A Rollens



[Keaka Conservation Trust](#)



[Pacific Whale Foundation](#)



[Mziki Wildlife Reserve - Phinda](#)



[Wildlife Act Conservation](#)



[Manyoni Reserve - Zululand](#)



From: [sadie sarkissian](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Opposing item D-4
Date: Wednesday, November 6, 2024 5:13:13 PM

Aloha My name is Sadie Eckart and I strongly oppose the recommendation in the agenda item D4. I along with many family on all islands strongly oppose this. My Kupuna would not approve of this at all. This proposed long term item is premature and highly threatens for more conflict and uncertainty over Maui's water resources. This proposal would authorize more water to be diverted than would be available after the water commissions amended interim in-stream flow standards are implemented: ignores still unfilled need to implement these flow standards, which are critical to stopping the ongoing harm being inflicted on East Maui's streams, watersheds and estuaries turning a blind eye to the significant and ongoing waste of public trust water, including from leaky unlined reservoirs.

I am writing this note because I strongly oppose this 100%. No, no, no.

Sincerely,

Sadie Eckart

[Yahoo Mail: Search, Organize, Conquer](#)

From: [wiggly 808](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Agenda item D4
Date: Wednesday, November 6, 2024 9:33:43 AM

Hello Chair Chang and Members of the Board of Land and Natural Resources.

My name is Nathalie Sato and I strongly OPPOSE the recommendation in agenda item D-4.

The proposed long-term disposition in this agenda item is premature and threatens to only create more conflict and uncertainty over Maui's water resources. The proposal would authorize more water to be diverted than would be available after the Water Commission's amended interim instream flow standards are implemented; ignores the still-unfulfilled need to implement these flow standards, which are critical to stopping the ongoing harm being inflicted on East Maui's streams, watersheds, and estuaries; turns a blind eye to the significant and ongoing waste of public trust water, including from leaky unlined reservoirs; and fails to give the 'Aha Wai o Maui Hikina a fair chance at negotiating for the disposition of Maui Hikina's streams, before launching a contested case hearing over a potential water license to a real estate investment trust and Canadian pension fund with no duty to uphold the public trust or the public's interests in their control over Maui's water resources.

Please do not allow this recommendation to move forward, which would allow private corporate entities to continue to flaunt the public trust and state water code - including the Water Commission's still-outstanding orders - while wasting potentially millions of gallons of water per day with no consequence.

Mahalo nui for your consideration of this testimony.

Sincerely

Nathalie Sato

Sent from my iPhone

From: [John Shockley](#)
To: [DLNR.BLNR.Testimony](#)
Cc: [Rita Shockley](#)
Subject: [EXTERNAL] LIVE NOTE: Testimony on Item D-4. Maui Water Allocation.
Date: Wednesday, November 6, 2024 10:22:32 AM

Aloha Chair Chang and Members of the Board of Land and Natural Resources,

We strongly OPPOSE the recommendation in agenda item D-4.

The proposed long-term disposition in this agenda item is premature and threatens to only create more conflict and uncertainty over Maui's water resources. The proposal would authorize more water to be diverted than would be available after the Water Commission's amended interim instream flow standards are implemented; ignores the still-unfulfilled need to implement these flow standards, which are critical to stopping the ongoing harm being inflicted on East Maui's streams, watersheds, and estuaries; turns a blind eye to the significant and ongoing waste of public trust water, including from leaky unlined reservoirs; and fails to give the 'Aha Wai o Maui Hikina a fair chance at negotiating for the disposition of Maui Hikina's streams, before launching a contested case hearing over a potential water license to a real estate investment trust and Canadian pension fund with no duty to uphold the public trust or the public's interests in their control over Maui's water resources.

Please do not allow this recommendation to move forward, which would allow private corporate entities to continue to flaunt the public trust and state water code - including the Water Commission's still-outstanding orders - while wasting potentially millions of gallons of water per day with no consequence.

Mahalo nui for your consideration of this testimony.

Sincerely,

John & Rita Shockley

Free Access Coalition

From: Sydney Smith
To: DLNR, BLNR, Testimony; Green, Josh B; Gina Young; Shane Sinenci; Jonathan Scheuer; Moke Jr, Kahiamoe; Bobbie Patnode; Richard Bissen; John Shuffiebean; Gabe Johnson; Kate Griffiths; Lucienne de raie; Shay Chan Hodoes; Cynthia Lallo; Tom Cook; Bill Snipes
Subject: [EXTERNAL] Testimony; Board of Land and Natural Resources Meeting of November 8, 2024 Item #4
Date: Wednesday, November 6, 2024 5:16:19 PM

Aloha Chair Chang and Board Members,

I've been trying to contact Mahi Pono for over 6 years. I share a boundary with them that's nearly a mile long. People dump garbage on their unfenced and unmaintained property and it rolls down and lands in the Maliko Stream above Kamaole Weir on my property. Then myself, my husband and my employees yard it out and dispose of it properly. Sometimes it's dozens of tires, barrels of unknown oil or chemicals, dead animal carcasses and suitcases we assume were stolen from the Kahului Airport. Then my husband and I pay out of our pocket to properly dispose of everything we haul out of there.

When that land belonged to Maui Pine, Colin Cameron, who was my neighbor at the time, was helpful, lent a hand and was sympathetic. When A&B took over, Pete Baldwin was also easy to talk to and a friend and they would send a truck to help haul away the trash that we picked up. They were good neighbors.

We have cared for this land and the stream for over 40 years. After Mahi Pono took over I've been unable to get any response from a single person associated with them. My neighbor had a lease within this same lot with A&B and assumed it would transfer over to new management. No response after years of trying.

This seems very unCanadian and does not bode well for future issues. After my experience I'd be very reluctant to trust them to be a good neighbor or to share water resources that belong to the public.

As a voter and someone who worked hard to help create the charter amendment for the formation of Regional Water Authorities I am opposed to The Board of Land and Natural Resource's attempt to circumvent the will of the people just 2 days after the Director of the East Maui Regional Water Authority was sworn in to head this new department.

The Hawaiian people have worked for over a century to have a voice in how the water in East Maui is allocated. They followed the law and have worked patiently and with integrity. We should expect no less from our government employees and elected officials.

The governor needs to come here to Maui and listen to the people. Our mayor needs to be at the table. Are you just assuming Mahi Pono will be a good neighbor? That's what I assumed too and it hasn't been the case at all.

I have heard no news about an assessment of this resource. A resource of paramount value to the people of Maui County.

The 3,764 gallons per acre per day listed in the Recommendation Report is more than twice what the State of California calculates citrus crops require. Anyone who knows agriculture will know that this is an extremely inflated amount. Why is that?

Protecting the watershed should be of primary importance. In Hawaii, water is a public trust, guaranteed in our Constitution. But there's really very little public trust anymore, if there's any at all.

Given the future political party change at the federal level, why would you risk the potential public prosecution of our governor for giving preferential treatment to a foreign entity over his own people? This is against federal law.

Ms. Chang, your actions will determine if the public has any reason to trust the government or the governor at all. Your actions will determine if this plays out on CNN or at Mayor Bissen's conference table.

This is a photo of the Mahi Pono parcel taken on Tuesday, November 5th, 2024. Our property is located right below. All we've wanted is for them to talk to us to allow us to fence it and maintain it for the good of the stream located on our shared riparian boundary. If they can't even do that what are our chances that they will be good stewards of our precious water resource?



Sydney Smith
Maliko Estate Coffee
Ag Working Group, chair
365 Kaluanui Road
Makawao, HI 96768
808-268-3646
malikoestate@icloud.com

From: [steini](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] agenda item D-4
Date: Wednesday, November 6, 2024 9:16:30 AM

Aloha

I strongly OPPOSE the recommendation in agenda item D-4.

The proposed long-term disposition in this agenda item is premature and threatens to only create more conflict and uncertainty over Maui's water resources. The proposal would authorize more water to be diverted than would be available after the Water Commission's amended interim instream flow standards are implemented; ignores the still-unfulfilled need to implement these flow standards, which are critical to stopping the ongoing harm being inflicted on East Maui's streams, watersheds, and estuaries; turns a blind eye to the significant and ongoing waste of public trust water, including from leaky unlined reservoirs; and fails to give the 'Aha Wai o Maui Hikina a fair chance at negotiating for the disposition of Maui Hikina's streams, before launching a contested case hearing over a potential water license to a real estate investment trust and Canadian pension fund with no duty to uphold the public trust or the public's interests in their control over Maui's water resources.

Please do not allow this recommendation to move forward, which would allow private corporate entities to continue to flaunt the public trust and state water code - including the Water Commission's still-outstanding orders - while wasting potentially millions of gallons of water per day with no consequence.

Mahalo nui for your consideration of this testimony.

Lorezn Steininger

From: [Justin Teixeira](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Agenda item D4
Date: Wednesday, November 6, 2024 9:35:29 AM

Aloha Board Members,

My name is Justin Teixeira. and I am a lifelong Maui resident who cares deeply about the future of our island's natural resources and agriculture. I am writing to ask that you move forward with issuing a long-term water lease to Mahi Pono and East Maui Irrigation (EMI).

With a secure lease in place, Mahi Pono and EMI can move forward with critical infrastructure upgrades that will make the water delivery system more efficient, conserving water and protecting this essential resource for all. These upgrades will require a significant financial investment, and it is unreasonable to expect them to proceed without the security that a long-term lease would provide.

Issuing this lease will allow our community to continue growing food sustainably and responsibly while ensuring that our water resources are used efficiently. By moving forward with this decision, you'll support the future of agriculture on Maui and help to protect this vital system for generations to come.

Mahalo for your consideration.

Justin Teixeira

From: [genre ulit](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Item D4
Date: Wednesday, November 6, 2024 10:38:42 AM

Aloha Board Members,

My name is Genre Ulit, and I kindly ask the board to support Mahi Pono in securing a long-term water lease so they can continue the critical work needed to support local food production and sustainability here on the island. There is still so much more to be done to ensure a sustainable future for Maui, but this progress cannot move forward unless a long-term lease is secured. Please support local food production and the continued growth of our island's agricultural efforts.

Mahalo for your consideration.

Sent from my iPhone

From: [Sandra Van Derveer](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Testimony in opposition of agenda item D 4
Date: Wednesday, November 6, 2024 8:30:17 PM

I am a very concerned Maui resident who emphatically opposes item D4 as it does not serve the people Of Maui. I am concerned that this proposal can be used to supply water to private corporations at the detriment of public needs. Also this proposal does not address water waste potentials. Mahalo for taking my concerns into consideration when deciding on this important issue.
Sandra Antonios

Sent from my iPhone

From: [Randan Vares](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Item D4
Date: Wednesday, November 6, 2024 10:28:13 AM

Aloha Board Members, My name is Randan Vares, and I was born and raised on Maui. I respectfully request that the board move forward with issuing a water lease to East Maui Irrigation (EMI). EMI has done its due diligence in adhering to the interim instream flow standards, and it is critical that they are granted a long-term lease in order to complete necessary infrastructure upgrades. These upgrades will allow for more efficient water management and conservation, ensuring a sustainable future for agriculture on Maui. Mahalo for your consideration.

From: [Lorraine Waianuhea](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Testimony in opposition to agenda item D-4
Date: Wednesday, November 6, 2024 9:46:32 PM

Aloha Chair Chang and Members of the Board of Land and Natural Resources,

My name is Lorraine Waianuhea and I strongly OPPOSE the recommendation in agenda item D-4.

The proposed long-term disposition in this agenda item is premature and threatens to only create more conflict and uncertainty over Maui's water resources. The proposal would authorize more water to be diverted than would be available after the Water Commission's amended interim instream flow standards are implemented; ignores the still-unfulfilled need to implement these flow standards, which are critical to stopping the ongoing harm being inflicted on East Maui's streams, watersheds, and estuaries; turns a blind eye to the significant and ongoing waste of public trust water, including from leaky unlined reservoirs; and fails to give the 'Aha Wai o Maui Hikina a fair chance at negotiating for the disposition of Maui Hikina's streams, before launching a contested case hearing over a potential water license to a real estate investment trust and Canadian pension fund with no duty to uphold the public trust or the public's interests in their control over Maui's water resources.

Please do not allow this recommendation to move forward, which would allow private corporate entities to continue to flaunt the public trust and state water code - including the Water Commission's still-outstanding orders - while wasting potentially millions of gallons of water per day with no consequence.

Mahalo nui for your consideration of this testimony.

Sincerely,

Lorraine Waianuhea

From: [Pete Wilson](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Agenda item D-4
Date: Wednesday, November 6, 2024 9:06:48 AM

Aloha Chair Chang and Members of the Board of Land and Natural Resources,

My name is **Peter Wilson** and I strongly OPPOSE the recommendation in agenda item D-4.

The proposed long-term disposition in this agenda item is premature and threatens to only create more conflict and uncertainty over Maui's water resources. The proposal would authorize more water to be diverted than would be available after the Water Commission's amended interim instream flow standards are implemented; ignores the still-unfulfilled need to implement these flow standards, which are critical to stopping the ongoing harm being inflicted on East Maui's streams, watersheds, and estuaries; turns a blind eye to the significant and ongoing waste of public trust water, including from leaky unlined reservoirs; and fails to give the 'Aha Wai o Maui Hikina a fair chance at negotiating for the disposition of Maui Hikina's streams, before launching a contested case hearing over a potential water license to a real estate investment trust and Canadian pension fund with no duty to uphold the public trust or the public's interests in their control over Maui's water resources.

Please do not allow this recommendation to move forward, which would allow private corporate entities to continue to flaunt the public trust and state water code - including the Water Commission's still-outstanding orders - while wasting potentially millions of gallons of water per day with no consequence.

Mahalo nui for your consideration of this testimony.

Sincerely,
Peter Wilson

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Pete Wilson
13-927 Kahukai Street
Pahoa HI 96778
808-557-8108

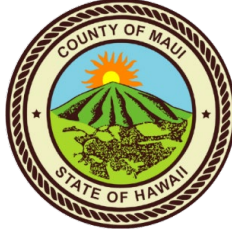
From: [Harriet Witt](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] OPPOSE the recommendation in agenda item D-4
Date: Wednesday, November 6, 2024 9:12:31 AM

Aloha Chair Chang and Members of the Board of Land and Natural Resources,

The proposed long-term disposition in this agenda item is premature and threatens to only create more conflict and uncertainty over Maui's water resources. The proposal would authorize more water to be diverted than would be available after the Water Commission's amended interim instream flow standards are implemented; ignores the still-unfulfilled need to implement these flow standards, which are critical to stopping the ongoing harm being inflicted on East Maui's streams, watersheds, and estuaries; turns a blind eye to the significant and ongoing waste of public trust water, including from leaky unlined reservoirs; and fails to give the 'Aha Wai o Maui Hikina a fair chance at negotiating for the disposition of Maui Hikina's streams, before launching a contested case hearing over a potential water license to a real estate investment trust and Canadian pension fund with no duty to uphold the public trust or the public's interests in their control over Maui's water resources.

Please do not allow this recommendation to move forward, which would allow private corporate entities to continue to flaunt the public trust and state water code - including the Water Commission's still-outstanding orders - while wasting potentially millions of gallons of water per day with no consequence.

Mahalo, Harriet Witt, 43 Puu Koa Place, Haiku HI 96708



EAST MAUI WATER AUTHORITY
COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793

November 6, 2024

Dawn Chang, Chair and Members
Board of Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96809

Re: BLNR Agenda for November 8, 2024, Item D-4: Decision Making Regarding: Recommendation to hold a contested case hearing over the proposed disposition of a water license by public auction or by direct negotiation to the County of Maui covering the diversion of public surface water not to exceed an amount of 85.23 million gallons per day from Koolau Forest Reserve, Island of Maui, Hawaii

Aloha e Chair Chang and Members,

Thank you for this opportunity to submit testimony. As Director of the East Maui Water Authority, I am requesting this Board to defer item D-4. I have three main points to raise in support of this request for a deferral, but first provide some essential background information.

Essential Background

In November 2022, over 64 percent of Maui voters approved the Maui County Charter (MCC) amendment enabling the establishment of the East Maui Water Authority. Under MCC Chapter 19, the East Maui Water Authority (EMWA) is mandated to acquire long-term water rights to collect and distribute water from the East Maui license area. Fulfilling this mandate will require negotiation with the state and other critical parties, including the current revocable current permit holder.

Less than two months ago, a similar agenda item was withdrawn from the Board's agenda for Friday, September 27, 2024, acknowledging the EMWA and our Board, the `Aha Wai o Maui Hikina / East Maui Regional Community Board (AWOMH) as well as Mayor Bissen's request to explore long term partnership opportunities. Relying on the statements from Chair Chang issued in the press release on September 26, 2024, we were shocked and surprised to see the current proposal. The submittal for agenda item D-4, while referencing a possible disposition to the County of Maui through direct negotiation, actually only authorizes entering into a contested case on issuing a license. For this and other reasons it is premature and problematic, as we explain below.

I. The BLNR's approval to move toward issuance of a 30-year water license giving control over the water to a private entity violates the Public Trust Doctrine

The public's support of the Charter amendment creating the EMWA showcases their desire to place water delivery under the control of the community. Water is protected as a public trust. The proposed water license is clearly written to first and foremost provide water for long held diversified agricultural uses. This violates your Board's duties under the public trust, which is to give priority to public trust uses of water and public interests. The issuance of a license to a private entity without first meaningfully negotiating with the EMWA and AWOMH for the disposition of the water is a breach of the BLNR's public trust duties. As noted this year by the Hawai'i Supreme Court in *Na Wai`Eha II* (154 Hawai'i 309, 359, 550 P.3d 1167, 1217 (2024)), "no private party has a vested right to continue an existing water use to the detriment of the public because water is a public resource protected by the public trust." Your proposal does exactly the opposite, proposing to vest rights for 30 years to continue existing private water uses -- at the expense of a public resource and a public entity.

II. Approval of this proposal would effectively foreclose the ability of the EMWA and AWOMH to implement their duties under the County Charter

The state's recommendation to enter into a contested case effectively forecloses the county's ability to negotiate a disposition under HRS 171-95. A contested case is the least conducive negotiating environment to produce a mutually beneficial agreement.

The timing and proposed scope of the contested case also puts the County at a disadvantage. The water authority's director was sworn in on November 6th. Among the reasons our operations have only just started include the most obvious – that Maui County has rightfully focused its efforts on post fire recovery for the last year. The proposed license is written for disposition by public auction, to the current RP holder. The needs of the County's future water usage are not addressed, and the Maui County Water Use and Development plan is not even mentioned. The Maui County Department of Agriculture has not been consulted to ascertain their future water needs, including those for phase 2 development of Kula Ag Park. Staff recommendation No. 3 advises the Board to "Limit the scope of the contested case to issues relevant to the management of stream diversions for the Koolau Forest Reserve." It is unclear how the needs of the county will be considered.

III. There are significant informational gaps which would preclude the consideration of essential issues in any contested case hearing

While as noted above, a specific narrow scope for the contested cases given, in many ways, it is unclear exactly what the contested case is about. Critical, fundamental issues, which would impact the rights of the county are not referenced or addressed, even though they would clearly impact the county and its citizens. There is also an absence of information essential for Board decision-making. The Board and any parties should first be provided essential information on a number of topics, including:

- a) The status of implementation of CWRM's orders regarding stream modifications issued in 2018 and 2022 (see <https://files.hawaii.gov/dlnr/cwrm/submittal/2022/sb20221115B5.pdf>)

- b) An appraisal which is required prior to the issuance of any license, pursuant to HRS Sections 171-13, -14, -17, and -32.
- c) An evaluation of the status of the diversion system (as required by *Waihole*, 94 Hawaii at 149, p P.3d at 461).
- d) The timeline for approving water reservations for DHHL by the Commission on Water Resource Management (CWRM)
- e) The status of research which will lead to propose to alterations to existing Interim Instream Flow Standards

The staff submittal fails to meaningfully delineate the scope of the recommended contested case hearing and seems to be merely for the development of a comprehensive record before the board authorizes the water disposition from the Koolau Forest Reserve to a private party.

Conclusion

Instead of forcing the county into a contested case that clearly favors a private entity, it would seem that a more equitable approach towards a sister government agency would be to meet with appropriate County officials to determine their current and future needs and work with them, to ensure that their needs are met. Given that a revocable permit for 2025 will still need to be issued, allowing additional time for consultation and negotiations to take place is a reasonable request. We urge the board that this agenda item be deferred, allowing the EMWA and any interested parties to negotiate in good faith with BLNR and DLNR working cooperatively with the parties.

Mahalo,
Gina Young, Director
East Maui Water Authority