

From: [Barbara Barry](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Hold the line with Mahi Pono and their water requests vs requirements.
Date: Tuesday, December 9, 2025 10:03:06 AM

Dear Chair Chang and Members of the Land Board,

My name is Barbara Barry and I urge you to recognize that the staff recommendation in this agenda item is critically flawed.

Of the many issues with this agenda item, perhaps the most egregious is the proposal to allow Mahi Pono and East Maui Irrigation to take even more water than was taken from East Maui's streams last year. This board should not be giving Mahi Pono and East Maui Irrigation even more water - not when streams ordered restored by the Water Commission in 2022 continue to be drained dry. Not when Mahi Pono still refuses to line its century-old reservoirs after decades of water waste. Not when we do not understand the impacts of the diversion system on Makapipi stream. Not when the terms of the new revocable permit are unenforceable. And not when a standing court order specifically prohibits the board from doing so.

Mahalo nui,

Barbara Barry

Ha'ikū, Hi

From: [Betsy Bowen](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Testimony on Agenda Item D-15
Date: Tuesday, December 9, 2025 1:17:17 PM

Dear Chair Chang and Members of the Land Board,

My name is Betsy Bowen and I am writing to respectfully urge you to recognize that the staff recommendation in this agenda item is critically flawed.

Of the many issues with this agenda item, perhaps the most dangerous to our future is the proposal to allow Mahi Pono and East Maui Irrigation to take even more water than was taken from East Maui's streams last year.

This board should not be giving Mahi Pono and East Maui Irrigation even more water - not when the streams ordered to be restored by the Water Commission in 2022 continue to be drained dry. And not when Mahi Pono still refuses to repair and line its century-old reservoirs after decades of water waste.

Not when we do not understand the impacts of the diversion system on Makapipi stream. And not when the terms of the new revocable permit are unenforceable. Especially not when a standing court order specifically prohibits the board from doing so.

Thank you for your attention to this vitally important matter to Maui's taxpayers and citizens.

Respectfully submitted,

Betsy Bowen

From: [Linda Franz](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Water rights should NEVER EVER be sold!
Date: Tuesday, December 9, 2025 3:39:33 PM

Our names are Douglas Plauche and Linda Franz and I urge you to recognize that the staff recommendation in this agenda item is critically flawed.

Your single focus of responsibility is to manage our public water for the people of Maui, not for corporations. We the people of Maui will NOT take a back seat to corporations any longer! If you want to keep your jobs, you need to start managing our water to benefit the citizens of Maui. We will vote you out and we will fight for our rights to our community water! DO NOT sell one drop of our community water rights to corporations but instead let them pay Maui County for water they use, with penalties for wasting water.

Water rights that currently belong to Mahi Pono should be revoked immediately, so they will have to pay Maui County for the water they use with penalties for wasting water. Their weak agricultural endeavors are a ruse to start planning construction developments. Yes, we know about this!

We both consider this proposal to sell water rights to our community water to be a criminal act against the citizens of Maui!

Of the many issues with this agenda item, perhaps the most egregious is the proposal to allow Mahi Pono and East Maui Irrigation to take even more water than was taken from East Maui's streams last year. This board should not be giving Mahi Pono and East Maui Irrigation even more water - not when streams ordered restored by the Water Commission in 2022 continue to be drained dry. Not when Mahi Pono still refuses to line its century-old reservoirs after decades of water waste. Not when we do not understand the impacts of the diversion system on Makapipi stream. Not when the terms of the new revocable permit are unenforceable. And not when a standing court order specifically prohibits the board from doing so.

We are watching to see if the people of Maui need to rally to file an injunction,

Douglas Plauche and Linda Franz

From: [Alana Ross](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Testimony on Agenda Item D-15
Date: Tuesday, December 9, 2025 10:09:42 AM

Dear Chair Chang and Members of the Land Board,

My name is Alana Ross of Hana, Maui and I urge you to recognize that the staff recommendation in this agenda item is critically flawed.

We have never seen the streams so dry over here on the East side of Maui. Our favorite watering holes are dried up or way below their normal levels. We already have a drought and this is just making it worse. In some places I have seen dead fish with no water, and other places nearly a trickle of what use to be flowing streams. It is crucial that you stop taking the water and leaving our ponds and taro fields struggling to stay alive.

This board should not be giving Mahi Pono and East Maui Irrigation even more water - not when streams ordered restored by the Water Commission in 2022 continue to be drained dry. Not when Mahi Pono still refuses to line its century-old reservoirs after decades of water waste. Not when we do not understand the impacts of the diversion system on Makapipi stream. Not when the terms of the new revocable permit are unenforceable. And not when a standing court order specifically prohibits the board from doing so.

Please re consider how this is already destroying the most beautiful part of Maui!

Mahalo nui,

Alana Ross

Hana, Maui



SIERRA CLUB OF HAWAII

Testimony to the BOARD OF LAND AND NATURAL RESOURCES

December 12, 2025

9:00 AM

Conference Room 132

Agenda Item D-15:

ISSUANCE OF REVOCABLE PERMIT TO MAHI PONO, LLC AND EAST MAUI IRRIGATION COMPANY, LLC FOR THE DEVELOPMENT, DIVERSION, AND USE OF SURFACE WATER FOR DIVERSIFIED AGRICULTURE, CURRENTLY EXISTING HISTORICAL INDUSTRIAL AND NON-AGRICULTURAL USES, RESERVOIR, FIRE PROTECTION, HYDROELECTRIC, AND COUNTY OF MAUI DEPARTMENT OF WATER SUPPLY AND KULA AGRICULTURAL PARK PURPOSES ON THE ISLAND OF MAUI; TAX MAP KEYS: (2) 1-1-001:044 AND 050, 1-1-002:002 (POR.), 1-2-004:005 & 007, 2-9-014:001, 005, 011, 012 & 017.

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

The Sierra Club requests a contested case hearing.

The staff submittal includes egregious errors and fails to comply with court mandates.

I. **The Staff Submittal Defies the Environmental Court's Order and Allows Too Much Water to be Taken.**

The Environmental Court instructed BLNR to “Ensure that CWRM’s interim instream flow standards are in place and fully implemented **before allowing more water to be taken** from east Maui streams.” *Sierra Club v. BLNR*, Civil No. 1CCV-22-0000794 (LWC). That is an instruction – **not** “guidance for the Board to consider.” The court also concluded that in 2022, BLNR “improperly authorized **an increase in the amount of water diverted** from east Maui before resolution of the Sierra Club’s petition to set instream flow standards.”

Your staff committed a mathematical blunder in calculating how much water can be taken from East Maui streams. In 2025, EMI took the following amounts of water according to the first column of their reports.

Jan-25	31.28
Feb-25	21.04
Mar-25	23.58
Apr-25	27.37
May-25	25.94

Jun-25	24.65
July-25	35.6
Aug-25	14.46
Sep-25	8.25
Oct-25	12.04

The average amount of water that EMI took in 2025 is 22.41 mgd.

Your staff has misinterpreted the data that East Maui Irrigation has been submitting to you. The staff used data from the diversified agricultural column, but that column includes water taken from the revocable permit area as well as water from outside the revocable permit area and lots of groundwater. It calculated that the average amount of water **used** this year was 35.22 million gallons per day (MGD). But the court's order does not refer to the amount of water **used**; it refers to the amount **taken**.¹

Staff claims that its recommendation maintains the “status quo during this 2026 RP.” It does not. It authorizes more water to be taken than has been taken – 57% more. The court instructed BLNR to ensure that CWRM's orders were fully implemented “**before allowing more water to be taken.**” The average amount of water taken this year is 22.41 mgd. Until CWRM's IIFS orders have been met, the board cannot allow more water than that to be taken.

This board has already gotten in trouble with the court for making frivolous representations that were manifestly and palpably without merit. *BLNR v. Crabtree*, 154 Hawai'i 113, 119, 547 P.3d 446, 452 (2024). Does it wish to increase the court's ire by defying the court's instructions?

The Water Commission's requirements for instream flow standards must be fulfilled. CWRM ordered modifications to stream diversions in 2018 and 2022. These modifications are essential for riparian, recreational, and cultural uses of the streams as well as biological values. CWRM concluded that “there is need to ensure downstream flows” in Ho'olawa, Waipi'o, Hānawana, Nailiilihaele, 'O'opuola, and Kailua streams. “[A]dditional flow must be provided to meet recognized instream uses of water.”² Yet, none of the diversion structures have been modified for these six streams! CWRM has already concluded that diversions on six stream are harming others. Until that harm is stopped, BLNR cannot allow EMI or Mahi Pono take more water.

II. The Cap Must be Monthly.

The amount of water allocated must be averaged **monthly**, not annually. An annual cap is unenforceable given that you re-visit the permit before the year ends. It also allocates too much water. In dry months, Mahi Pono can use water stored in its to-be **lined**

¹ The staff submittal's use of numbers that include groundwater reveal an internal contradiction of its treatment of groundwater as discussed further below.

² <https://files.hawaii.gov/dlnr/cwr/submittal/2022/sb20221115B5.pdf> at 104.

reservoirs.

III. The Staff Submittal Incentivizes the Waste of Water.

The increase in the allocation of the County is troubling. The County used more water than it ever has in September because (1) it was unusually dry and (2) the Olinda water treatment plant was down for repairs. The Olinda treatment plant should be operating again in early 2026. There is no need to increase the allocation.

The County uses on average less than 4 mgd (as averaged monthly). If this Board allows EMI to take 6.25 mgd (as averaged monthly), it is condoning the waste of 2.25 mgd monthly on average. That's a lot of water!

There is a better way:

1. Allocate to the County 5 mgd (as averaged monthly) with an allowance that the County can use more water than average when needed in critical times.
2. Authorize Mahi Pono to use all the water that the County does not use – so that it is not wasted.
3. Require that Mahi Pono line its reservoirs so that the water that the County does not use and that is available to Mahi Pono be conserved rather than allowed to seep into the ground.

Condition 18 should be re-worded as follows:

As a condition of the permit, the Permittee shall provide up to 5.0 mgd to the County of Maui daily (as averaged monthly). The Permittee can anticipate being able to use 1 mgd of this allocation on average, but it must provide more than 5 mgd of water to the County on those days when the County requires it. On those days, the Permittee can rely on water stored in reservoirs and groundwater to make up the difference. Once the County notifies BLNR that its improvements to the Kamaole Treatment Plant are completed and its capacity increased, the permit will be placed on the agenda of the next board meeting to discuss revisions to this condition.

This revised language would go a long way to reducing waste.

IV. Makapipi Stream Must Be Fully Restored.

Long ago, our supreme court explained that in order to transfer water, the entity seeking a transfer must prove no harm to any potentially affected interests in a stream. *Robinson v. Ariyoshi*, 65 Haw. 641, 649 n. 8, 658 P.2d 287, 295 n. 8 (1982). But EMI's transfer of water from the Makapipi development tunnels out of the watershed is harming users of Makapipi stream water.

When the Water Commission “fully restored” Makapipi stream, it did not prevent EMI from taking as much water as it wanted from the development tunnels built near Makapipi stream. If EMI stopped taking water from the East Makapipi Tunnel and Porgue Tunnel, that water would make its way downstream and flow into Makapipi Stream. Makapipi would then truly be fully restored. This board should not allow EMI to take any water originating in the Makapipi hydrologic unit, including from the East Makapipi Tunnel and Porgue Tunnel, from entering the Ko’olau Ditch and being transmitted out of the watershed through the ditch system.

A new condition should be added to the permit to read:

By August 1, 2026, EMI must prevent any water originating in the Makapipi hydrologic unit, including from the East Makapipi Tunnel and Porgue Tunnel, from entering the Ko’olau Ditch and being transmitted out of the watershed through the ditch system.

V. Mahi Pono’s Needs are Exaggerated.

Because the court has instructed BLNR not to allow more water to be taken, it is not critical that this board determine how much water Mahi Pono really needs. To the degree it is going to consider it, please note that the staff’s estimates are exaggerated.

A. Water Needed for Irrigation.

It is patently obvious that Mahi Pono does **not need** 35.22 mgd of water **from east Maui streams**. It used 35.22 mgd from groundwater, from streams outside of the revocable permit area and from the revocable permit area. The Hawai’i Supreme Court has explained: “Permit applicants must **demonstrate their actual needs and the propriety of draining water from public streams to satisfy those needs.**” *Kauai Springs, Inc. v. Planning Comm’n of the Cnty. of Kaua’i*, 133 Hawai’i 141, 174, 324 P.3d 951, 985 (2014). Clearly, Mahi Pono does not 35.22 mgd of water from east Maui streams. That’s how much water from all sources that it used.

It is generally understood that in Hawai’i diversified agriculture requires no more than 2,500 gallons per acre per day. A&B’s Meredith Ching testified under oath, “the normal diversified ag standard is 2,500 acres – gallons per acre per day.” CWRM’s 2021 Nā Wai ‘Ehā decision limited the use of stream water for irrigation to 2,500 gallons per day. Mahi Pono itself entered into a November 2019 Stipulation Regarding SWUPA 2206 limiting its use to 2,500 gallons per acre per day on nearby land. CWRM concluded that 2,500 gallons per cultivated acre per day was a reasonable amount of water to be used for agriculture in Central O’ahu. *In re Water Use Permit Applications*, 105 Hawai’i 1, 7 & 21, 93 P.3d 643, 649 & 663 (2004).

Mahi Pono’s own expert, Dr. Fares, estimated that citrus, which comprises more than 85% of the acres, requires 2,536 gallons per acre day. Macadamia requires only 2,366 gallons per acre per day; while coffee requires a bit more, 2,583 gallons per acre per

day. Recently, Mahi Pono started planting alfalfa -- which it calls a forage crop -- which requires far more water per acre than any other crop. Its water needs should not be based on a thirsty alfalfa. Mahi Pono's crops can survive on 2,536 gallons per acre per day (plus 6% system losses).

B. Groundwater is Available.

The Sierra Club needs to be able to question CWRM staff members under oath to demonstrate how misleading CWRM's comments are -- and how they are being taken out of context. The staff submittal itself acknowledges that groundwater can and should be used in the dry season. Thus, an average of 7 mgd of groundwater can be used. The staff submittal fails to acknowledge that EMI continues to take water from Huelo Streams that harms downstream water users -- and that the existing diversions there violate the instream flow standards.

The supreme court has explained that "The applicant must **demonstrate the absence of a practicable alternative water source.**" *Kauai Springs, Inc. v. Planning Comm'n of the Cnty. of Kaua'i*, 133 Hawai'i 141, 174, 324 P.3d 951, 985 (2014). The staff submittal does not show that groundwater is not a "practicable alternative water source." To the contrary, the use of 7 mgd of groundwater is practicable and sustainable. And 7 mgd has been used.

Despite what the staff submittal says, the Water Commission has repeatedly and officially recognized that groundwater is available and should be used for irrigating Central Maui crops. In 2018, the Water Commission -- not some anonymous staff person, but the entire commission in an official order -- estimated that 17.84 mgd of groundwater could be used to irrigate crops in central Maui.³ It determined that "**a portion**" (**not all**) "of the water needs under the Diversified Agricultural Plan must come from surface water." COL 120.

In 2022, the Water Commission adopted a staff submittal that recognized "the use of between 7.3 cfs and 9.3 cfs (4.7 and 6.0 mgd) of brackish groundwater available from the Paia aquifer system."⁴ It noted that "there is approximately 4.5 mgd available from the Paia aquifer system, where most of Mahi Pono wells are located."⁵

The EIS calls for pumping 16.47 mgd of groundwater for irrigation.

C. Unused County Water

Mahi Pono has available to it on average 1 mgd of water that the County does not use.

VI. Lining Reservoirs is Long Over-Due.

³ <https://files.hawaii.gov/dlnr/cwr/cch/cchma1301/CCHMA1301-20180620-CWRM.pdf> at FOFs 750, 794-795, 810.

⁴ <https://files.hawaii.gov/dlnr/cwr/submittal/2022/sb20221115B5.pdf> at 96

⁵ *Id.* at 100.

While the staff submittal is not as proactive as it should be, the Sierra Club acknowledges that it is a step forward. The permit “must include provisions that encourage system repairs and limit losses.” *Waiāhole II*, 105 Hawai‘i at 27, 93 P.3d at 669. “[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.” *Kauai Springs*, 133 Hawai‘i at 175, 324 P.3d at 985. When CWRM ordered A&B’s subsidiary, HC&S, to line a reservoir “to prevent a large portion of these losses,” the supreme court found that the Commission’s action was “commendable and shows the ‘diligence’ and ‘foresight’ expected of the Commission in its management of the public trust.” *‘Īao*, 128 Hawai‘i at 257, 287 P.3d at 158. In its 2018 decision, CWRM asked BLNR to “require improvements in the water delivery system to minimize leakage and waste.”

Mahi Pono recently received \$55 million from A&B.⁶ That money needs to be used to line the reservoirs. Mahi Pono has already invested tens of millions of dollars planting fruit trees from which it cannot harvest for many years – based on revocable permits that last only one year. After enjoying years of continuous use of diverted stream water, it can invest more money lining reservoirs that can also ensure the availability of water during droughts.

EMI should also line those sections of the ditch system that are losing water. Those losing sections are identified in the 2012 USGS study, Measurements of Seepage Losses and Gains, East Maui Irrigation Diversion System, Maui, Hawai‘i.

VII. The Authorized System Losses are Excessive

The supreme court described “nonuse” of water as “the perceived biggest waste of all.” *Waiāhole*, 94 Hawai‘i at 140, 9 P.3d at 452. The court recognized that “the policy against waste dictates that any water above the designated minimum flows and not otherwise needed for use remain in the streams in any event.” *Id.* at 156, 9 P.3d at 468. “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.” *‘Īao*, 128 Hawai‘i at 257, 287 P.3d at 158. The staff submittal calls on Maui County to “more efficiently use the water.” But it fails to similarly “incentivize” A&B/EMI to ensure that water is more efficiently used.

The Sierra Club has fundamental disagreements with the manner in which the staff defines and calculates system losses. It should provide a mathematical formula that reveals what columns it is subtracting and dividing in its calculation. Assuming that this board is comfortable with the staffs’ methodology, the staff calculates that system losses are 5.4%. That’s a remarkable number. If the staff is comfortable with its estimate, its condition 1 should mandate that system losses do not exceed 6% -- not

⁶ Brittany Lyte, Maui Water Wars: A&B Drops Out of Battle for Long-Term Water Control, Honolulu Civil Beat, June 24, 2025 available at <https://www.civilbeat.org/2025/06/maui-water-wars-ab-drops-out-of-battle-for-long-term-water-control/>

22.7%.

A 6% limit on system losses would be fairly consistent with CWRM's requirement that system losses from Nā Wai 'Ehā streams that irrigate nearby fields in Central Maui to be limited to less than five percent.

VIII. The Analysis of Traditional and Customary Practices is Offensive.

The staff submittal's analysis of traditional and customary practices is insulting and superficial.

First, does anyone doubt that growing kalo, catching 'o'opu, collecting 'ōpae, and gathering hīhīwai are traditional and customary practices? The legislature itself has recognized that traditional and customary rights include the cultivation or propagation of taro and the gathering of hīhīwai, 'ōpae, and 'o'opu for subsistence, cultural, and religious purposes. See HRS § 174C-101(c).

Second, it is undisputed that Hawaiians grew kalo, caught 'o'opu, collected 'ōpae, and gathered hīhīwai in East Maui. This is documented in A&B' environmental impact statement for the diversion of these streams (which was published **after** the CWRM decision referenced in the submittal). See Volume I at 4-159, 4-160, 4-165—4-181 and Volume II at 441 & 451. These practices are also documented in Kepa Maly's Wai O Ke Ola: He Wahi Mo'olelo No Maui Hikina, A Collection of Native Traditions and Historical Accounts of the Lands of Hāmākua Poko, Hāmākua Loa and Ko'olau, Maui Hikina (East Maui), Island of Maui at 50, 56, 89, 91, 99, 103, 125, 126, 128, 129, 135, & 156. And Professor Davianna McGregor has proved this as well.

Third, the record is clear that Hawaiians living in East Maui learned these practices from their ancestors.

Fourth, the staff forgets – again – that no one has assessed the impact of the diversions on the Huelo streams – where lo'i remain completely dry.

Finally, there has been no analysis as to the impact of the diversion of water from the Makapipi watershed and from the Huelo area on traditional and customary practices. Those practices cannot be exercised when streams are dry.

IX. More Data Needed.

There is so much this board and its staff do not know. This information is critical:

1. EMI must report monthly the streams from which was taken that month.
2. EMI must report monthly as to whether it took as much water as it was authorized to take from each stream. Or whether it could have taken more based on stream flow, but chose not to take more.

3. EMI must report monthly as to how much water was taken per day on average from each stream. It can install meters within the ditch before each stream and after each stream to calculate how much water was added to the ditch from the stream.

4. EMI should also install gauges in each stream so that we have real data as to how much water is flowing in each stream and how much is being taken out. We need real data to determine if instream flow standards are actually being met.

X. Conclusion

Many of the issues that the Sierra Club raises here will need to be addressed in a contested case hearing. If BLNR grants the Sierra Club a contested case hearing, promises to convene it before the end of January, and limits the amount of water taken to 23 million gallon per day as averaged monthly, the Sierra Club will not appeal BLNR's decision to allow water to be diverted while the contested case hearing takes place.

From: [Vickie Wangberg](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Testimony on Agenda Item D-15
Date: Tuesday, December 9, 2025 9:22:39 AM

Dear Chair Chang and Members of the Land Board,

Please recognize that this below is a problem.

The proposal to allow Mahi Pono and East Maui Irrigation to take even more water than was taken from East Maui's streams last year is a problem. This board should not be giving Mahi Pono and East Maui Irrigation even more water - not when streams ordered restored by the Water Commission in 2022 continue to be drained dry. Not when Mahi Pono still refuses to line its century-old reservoirs after decades of water waste. Not when we do not understand the impacts of the diversion system on Makapipi stream. Not when the terms of the new revocable permit are unenforceable. And not when a standing court order specifically prohibits the board from doing so.

Mahalo nui,

Vickie Wangberg