



EAST MAUI IRRIGATION COMPANY, LLC

P.O. BOX 791628, PAIA, MAUI, HAWAII 96779-1628 • (808) 579-9516

April 22, 2026

The Honorable Ryan Kanaka'ole
Acting Chair and Members of the State Board of Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96809
Via email: blnr.testimony@hawaii.gov

RE: BLNR Agenda April 24, 2026, Item D-1: Information Briefing on the County of Maui, Department of the East Maui Water Authority's Operational Capacity and Planning Related to the East Maui Irrigation System, Koolau Forest Reserve, Island of Maui, Hawai'i; Tax Map Keys: (2) 1-1-001:004 and 050; 1-1-002:002 (por.); 1-2-004:005 and 007; 2-9-014:001, 005, 011, 012, and 017

Dear Acting Chair Kanaka'ole and Members of the Board:

Thank you for the opportunity to submit written testimony on behalf of Mahi Pono LLC ("Mahi Pono") and East Maui Irrigation Company, LLC ("EMI") concerning the request for an update from the East Maui Water Authority ("EMWA"). While we understand that this agenda item is non-action, we submit this testimony to clarify and correct certain statements in EMWA's written testimony.

1. **Contested case hearing:** While EMWA states its understanding that a set aside would not require a contested case hearing, any long-term disposition of surface water rights by the Board, whether by public auction of a long-term license or set aside, would undoubtedly benefit from a full and developed record. To that end, even if a contested case hearing is not required, and we do not presently take a position on that question, such a process would aid the Board's long-term decisionmaking.

2. **Authority to operate ditch system:** EMWA appears to suggest that the County of Maui could operate the privately-owned EMI Ditch System through an executive order from the State. EMI owns the Ditch System and has no intention of selling it. While the State or the County could condemn the Ditch System, that action could not be accomplished through executive order.

3. **Discussion re: contracting services:** EMWA appears to suggest that the County is in discussions with Mahi Pono and EMI regarding contracting services for the management or operation of the EMI Ditch Systems. There have been no such discussions. On the contrary, Mahi



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Pono and EMI have made clear to the County that they do not wish to sell the EMI Ditch System and believe that Mahi Pono/EMI's ownership and management of the system best serves the community by ensuring consistent and reliable delivery of water to Central and Upcountry Maui.

4. **Effect of executive order:** We believe that EMWA is mistaken that “an executive order from the State can be granted to Maui County allowing the use of water emanating from State lands and for any and all interests the State holds in the East Maui water system.” Any interests that the State may have in the EMI Ditch System are set forth in the 1938 Agreement referenced on the first page of EMWA's testimony, and the assignment of the interests under the agreement cannot be accomplished through executive order. As to the use of water emanating from State land, to the extent the County intends to authorize the use of set-aside land (or water) by third-parties, the County can only do so consistent with the requirements of HRS chapter 171 and with the prior approval of the Board. Thus, if the County wanted to authorize a license or other use of the water, the County would need to seek approval from the Board, essentially putting us in the same position we are right now. Put simply, a set aside to the County merely adds another step to the existing process of authorizing the diversion of east Maui surface water and would not streamline the process or eliminate litigation over the use of water.

5. **Water delivery agreement:** EMWA states that central Maui agriculture will be supported by “a revised water delivery agreement between the County of Maui and Mahi Pono will be made to ensure water for crops.” The existing water delivery agreement between EMI and the County ensures delivery of water to the County for municipal purposes. By its terms, the agreement will expire if Mahi Pono does not receive a long-term lease or license for water

6. **Use of EMI Ditch System between Honopou and Kamole Weir:** EMWA also states that the County “will coordinate with Mahi Pono for access and/or ownership rights to the portion of the Wailoa ditch between Honopou Gulch and the Kamole treatment plant.” Mahi Pono and EMI have made clear to the County that they have no intention of relinquishing control or ownership of the EMI Ditch System.

We would be happy to address any questions that the Board may have and, again, appreciate the Board's hard work in considering these issues.

Sincerely,

Shan S. Tsutsui

Chief Operating Officer