Compilation of Public Testimony

Hydrologic Units:
- Waikamoi (6047)
- Puohokamoa (6048)
- Haipuaena (6049)
- Punalau (6050)
- Honomanu (6051)
- Nuaailua (6052)
- Ohia (6054)
- West Wailuaiki (6057)
- East Wailuaiki (6058)
- Kopiliula (6059)
- Waiohue (6060)
- Paakea (6061)
- Waiaaka (6062)
- Kapaula (6063)
- Hanawi (6064)
- Makapipi (6065)

Island of Maui

December 2009
PR-2009-19 REVISED

State of Hawaii
Department of Land and Natural Resources
Commission on Water Resource Management
INTRODUCTION

This document is a compilation of all testimony submitted to the Commission on Water Resource Management (Commission) related to the preparation of the Instream Flow Standard Assessment Reports (IFSAR) for the Hydrologic Units of Waikamoi (6047), Puohokamo (6048), Haipuaena (6049), Punalau (6050), Honomanu (6051), Nuaailua (6052), Ohia (6054), West Wailuaiki (6057), East Wailuaiki (6058), Kopiliula (6059), Waiohue (6060), Paakea (6061), Waiaaka (6062), Kapaula (6063), Hanawi (6064), and Makapipi (6065), Island of Maui.

This compilation represents the comments and testimony received by the Commission from October 31, 2009 to December 15, 2009. This is the timeframe between the close of the IFSAR public review period and the date of the Commission meeting where recommendations on the subject hydrologic units would be presented. Information received during the public review period can be found in the Compilation of Public Review Comments, PR-2009-18.

All comments have been separated into individual sections according to the submitting organization or individual, and the date of submission. Page numbers have also been applied to each original page. Comments were subsequently reduced to 2-per-page to save space and paper. Please contact the Commission to request full-size copies of any documents. Copying charges may apply.

REVISION: Staff recommendations for the subject hydrologic units were presented at a Commission meeting held in Paia, Maui (Paia Community Center) on December 16-17, 2009. This revised Compilation of Public Testimony includes testimony received after the close of business on December 15, 2009, and those received at the Commission meeting on December 16-17, 2009. The testimony received at the Commission meeting is not listed in any particular order.
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October 8, 2009

Ms. Laura Thielens, Chair
Members of the Commission on
Water Resource Management
P.O. Box 621
Honolulu, HI 96809

Subject: Commission on Water Resource Management (CWRM) Interim Instream Flow Standards

Dear Ms. Thielens:

I am writing in support of the CWRM that reflects a common sense approach to instream flow standards in Hawaii, specifically the island of Maui. In listening to the various opinions regarding the Na Wai Ela issue here on Maui and considering the impact any significant change in stream flows could have on our fragile economy I urge you and other members of the CWRM to do the following:

1. Consider as a priority the economy of Maui and not impact local business by unfairly allocating stream flows such that our economy is damaged.

2. Consider an allocation of stream flows based upon environmental significance and economic need. For example and as a priority where clearly there is an economic driver to allow for diversion (agriculture, existing communities and jobs) allow that diversion to continue and where enhanced stream flows would improve an already established environmentally significant area allow a reasonable allocation to occur so that environment can sustain itself.

I thank you for your time and wish you success in your and the CWRM’s deliberations on this important matter. I only ask that you please consider the economic implications of your actions and not further constrain the economy’s ability to be flexible in light of our current infrastructure shortfalls.

Ms. Thielens, should you have any questions regarding this letter please feel free to contact me in my office at 879-5205 or via email at charliej@pacificrimland.com.

Sincerely,

Charles Jencks
MAUI NEWS  Wednesday, November 4, 2009
http://www.mauinews.com/page/content/detail/id/525435.html?nav=10

PINEAPPLE PAU
Maui Pine to shut down by end of year

By HARRY EAGAR, Staff Writer

KAHULUI - Maui Pineapple Co. will shut down by the end of this year, Maui Land & Pineapple Co. announced Tuesday.

Several operations at Kapalua Resort will be transferred to other operators, including Outrigger Hotels & Resorts, which will manage the 206-unit Kapalua Villas.

In all, about 285 employees will be laid off. Another 133 will be offered employment at ML&P partner companies.

ML&P board Chairman Warren Haruki said Maui Pine has lost $115 million since 2002.

"Unfortunately, despite our exhaustive efforts to revitalize the pineapple business over the last few years and efforts to keep agriculture jobs on Maui, market conditions have not improved and pineapple operations at MPC are not financially sustainable," he said.

Of the lost jobs, 193 belong to ILWU Local 142 members, the last survivors of rounds of layoffs, pay cuts, concessions and closings. Almost all are veterans. Willie Kennison, ILWU Maui Division director, said: "It was coming, but we had hope. We were grasping at straws, hoping for the best."

ML&P Vice President Ryan Churchill said the company had made a last-ditch effort to preserve pine on Maui by negotiating with some former Maui Pine executives and employees who were trying to form a spinoff company. It would have taken over some of the operations and kept growing pineapple.

Kennison said the union was prepared to make some concessions to the new company to help it get on its feet.

Maui Pine was prepared to put in some capital, said Chief Financial Officer John Durkin, but members of the group couldn't find the necessary start-up capital, even though they looked literally to the ends of the earth. Going forward with an undercapitalized business would only have been a setup for failure.

Durkin said Maui Gold pine is profitable on Maui and the Neighbor Islands, but not really so on Oahu, where it competes with Dole, the surviving pineapple plantation in the islands. But every fruit sold on the Mainland lost money. Prices there are just too low, he said.
ML&P's Kapalua Resort also has lost tons of money, but it is considered to have better prospects than pineapple. The company reported losing $11.4 million on resort operations for the first nine months of this year, and it reported last week that it lost all the money originally invested in the Kapalua Bay Holdings venture.

But, with the completion of the Kapalua Spa and the Residences at Kapalua, the resort is in its best condition in five years, Durkin said.

Kapalua Land Co. will make strategic changes to its business model, the company's news release said. Instead of managing almost everything itself, it will "partner with 'best in class' operators in their respective fields who can manage select assets of the resort more effectively."

Although the deal has not been formally announced, Outrigger will manage the Villas. The Villas have individual owners but have been managed through the resort, which had encouraged many to upgrade their condominiums to its "gold standard" over the past few years.

Durkin said he has met with almost all the owners during the past two weeks, and they were generally enthusiastic about having Outrigger to find more tenants for them.

Outrigger Executive Vice President Barry Wallace said that deal has not been sealed, although the companies are in a due diligence period.

"We are very interested in being a part of the resort," he said.

An unnamed company will lease the new Kapalua Adventures. Its zip line ride down the West Maui Mountains has proved to be a popular attraction. Other operators will be found for resort shuttle services, resort security and the Kapalua Resort Association.

ML&P also will seek an operator for its Kapalua Farms organic operation that supplies fresh produce to the resort and also to local markets.

That leaves Kapalua Resort to operate two golf courses, four restaurants, its new spa and the retail outlets such as logo shops and Honolua Store. It also has water and wastewater treatment companies.

Kapalua Land also has valuable authorizations to develop land, including Kapalua Mauka, a large resort residential development; and commercial and residential property within the central part of the resort.

Churchill and Durkin said those developments will have to wait for market conditions to improve before anything happens. In the future, ML&P also will most likely look for joint venture partners to help finance real estate developments.

The Pulelehua new town for employee housing is also still part of the company's future, although that West Maui project does not yet have all its authorizations.

ML&P will look for other uses for its agricultural land. About 2,500 acres are still planted in pine. The land will be converted, as much as possible, to other crops or ranching, which would bring theHonolua lands full circle. Businesses ancestral to ML&P ranched in West Maui before pineapple started in the 1920s.

Churchill said the company does not intend to sell off more large tracts of agricultural land, as happened at Pioneer Mill and Waiaku Sugar when those plantations shut down. It is unwinding its leases to and from Hawaiian Commercial & Sugar Co. Those two businesses leased from each other in East Maui, so that it is not always the case that a pine field is owned by ML&P or a sugar field is owned by HC&S.

Churchill said the company expects to keep up its water rights in West Maui, since the land will still be used for agriculture.

Although the new management put in place by principal shareholder Steve Case claims it did its best to preserve pine, not everyone accepts that.

Harold Gouveia, who worked for Maui Pine for 36 years, said Tuesday: "I seen it coming for four years, since David Cole guys came in."

Cole, a former associate of Case's in tech businesses, was chief executive of Maui Pine in its final years. He was replaced as president and chief executive officer by Robert Webber at the beginning of this year, but Webber resigned about six months later. Haruki became chairman of the board after Cole's departure and was named interim chief executive officer when Webber left the company in May.

Pine had been profitable in the 1980s but started losing big money as foreign canners undercut prices. Cole said that, when he took over after Case started buying into the company, ML&P was "broke" in all three of its segments: farming, resort and development. He initiated a sweeping redirection that included rebuilding the Kahului cannery.

The company also sold off what it called "non-core" lands, and Cole and Churchill were among the buyers. The transactions were reported to be at market prices, with independent appraisals, but the land sales did not sit well with many old-timers.

One was Gouveia, whose grandfather worked for Maui Pine and whose father worked there for 45 years. He (Cole) bought the property he lives on from Maui Pine and made a luxury home on it," Gouveia said. "I asked him four years ago at one of the meetings, how he could sell our assets. He said it was no good for farming."

Gouveia didn't buy that. The land had been in pine. "How can you tell us the land is no good? I told him, you are the first guy to buy something that is no good," he said.

Gouveia's own children did not aspire to keep on at the plantation, except that they worked in the retail outlets such as logo shops and Honolua Store. It also has water and wastewater treatment companies.

"My dad was in management, and I was rank and file," Gouveia said, but they considered they were both ohana. His father often told him: "We get everything we have because of Maui Land and Pine."

Mary Cameron Sanford, who was replaced as chairwoman of ML&P when Case took control, described the company as an ohana.

Gouveia said the same: "Mrs. (J. Walter) Cameron (wife of the man who put various assets into their modern form of ML&P along with his son Colin in the '60s), she would come down and give us cookies and soda" when he and his friends were riding their bicycles as kids.

"That was a big thing," Gouveia said. "They took care of family. The Camerons really did a fine thing for the community."
The end of the pineapple business "really hurt," he said. "The new crowd took everything. They take advantage. They're not for the community."

Doug MacCluer, who worked for Maui Pine for 39 years, retiring as chief agronomist, said: "It didn't have to be that way."

He was among the group of farmer managers who tried to put together the spinoff business that would have kept farming pine.

MacCluer said Cole and Haruki might have a different opinion, but in his view, pine could have been saved.

"Decisions were not being made by ag people," he said. "If you are going to be a farmer, you damn well have to be a good farmer."

He faulted the decision to invest millions in a new cannery and fresh pack facility in Kahului "when Haliimaile ran just as fast and produced as high quality of product."

Cole does have a different opinion. ML&P "was in a weak position," he said, and he, as president, and the board tried what they could to turn the company around, both through cost controls and new technologies. He said ML&P "hired the best" people it could in marketing and farming.

There were "several forks in the road" during his tenure that, looking back, he can see might have had different results, Cole said.

At one point, he said, there was the possibility of selling the Maui Gold brand. He turned it down because it would have not have preserved jobs on Maui.

He said he was "heartbroken" by Tuesday's news.

As was Mary Sanford, who, with members of her family, agreed to sell their big stake in the company to Case, then regarded as a white knight riding in to save a company that had suffered losses in pine and was also experiencing problems at the resort.

At that time, ML&P was also in the commercial real estate business, owning the Queen Ka'ahumanu Center and Napili Plaza.

Those were among assets sold off, which at times allowed ML&P to show profits in recent years.

The company's ownership structure was unusual for a publicly traded corporation. About two-fifths of the shares were held by the Cameron family or close associates, and a slightly smaller amount was held by the Weinberg charitable trusts. Only a small amount was available to trade.

By gradually buying out the Camerons, Case took control of the board, although he is not a majority owner. He replaced - in Sanford's view, fired - her and her daughter, Claire, nominating his own people and selecting Cole as turnaround manager.

Claire Sanford, a niece of former company chief executive Colin Cameron, placed blame for the failure of pineapple squarely on the shoulders of ML&P's board and executives.

"I'm just appalled and disgusted," she said. "I really feel the board and the leadership at Maui Pine should be ashamed of themselves."

She said she felt the board in particular had been making decisions for years that were "self-serving" and not in the best interest of the company or the island.

As an example, she pointed to the company's decision to invest more than $17 million in a high-tech produce processing plant that ended up being abandoned, calling it a "pointless money pit."

"To have spent so much money without the vision to see how they could really pull pineapple up was, I think, very irresponsible," she said.

She said she also felt the company sank too much money into "grandiose" plans to replace the Kapalua Bay Hotel with the Residences at Kapalua, leaving it unable to save its agricultural operations.

"Historically, I see such a sad ending to what was such a great company," said Claire Sanford, whose missionary ancestors' land holdings served as the foundation of the business more than 100 years ago.

She said pineapple meant more than jobs to Maui - providing a lot of the "identity" of the island.

Claire Sanford, an outspoken critic of Cole, spoke bitterly of his promises to save pineapple when he took over as a favorite of Case.

"I can understand that the scale that it used to be was not sustainable, but David Cole was so confident in his ability to do something - or at least that's how he sold it to us," she said.

Under Cole's leadership, the company reduced its pineapple operation from 6,740 acres to about 2,000 acres. It also sold 4,000 acres to raise cash, most of the land former Upcountry pineapple fields.

Last year, Cole said the cuts were necessary to try to reduce costs and save pineapple, on a smaller scale.

Claire Sanford said her family instilled in her a sense of "stewardship of the land," and a responsibility to care for it and use it in a way that would benefit the people of Maui, mostly through jobs.

"I'm just feeling really sad, and just hoping the people on the board feel the amount of shame that they should feel," she said.

The latest changes in the company's direction were taken at a board meeting Monday. When the company announced big losses in its third quarter last week, the future of pine was said to be under review.

Durkin said although it will have lower revenues under the restructuring, it will still qualify and remain on the New York Stock Exchange.

The stock closed Tuesday up 27 cents to $6.52 on a small turnover of 32,000 shares. It had been at $16 a year ago. At today's price, the company is valued at $50 million.

Kennison said the loss of Maui Pineapple Co. was the toughest of all the blows to have hit the Maui Division of the International Longshore and Warehouse Union in recent years. Many of the union's members are laid off or on shorter hours at hotels, and the Maui Pine bargaining unit had been reduced by hundreds.
Two years ago, when the company made 10 percent pay cuts, the union negotiated a deal in which, if its members were laid off, they would get severance based on pre-cut levels.

Durkin said workers will be paid through the end of the year. Under the federal Worker Adjustment and Retraining Notification Act and the Hawaii Dislocated Workers Act, the company is obligated to give 60 days’ notice.

“We are hopeful that many employees in the affected resort divisions will be hired by the new management companies and owners,” Haruki said. “We express our deep respect and profound appreciation to our employees for their many contributions to the company over the years.”

Kennison said that when he and union agents met with employees at Haliimaile and then later in Kahului on Tuesday: “You could see, there hardly was a dry eye. They were just hoping for the best but they kind of knew it was coming.”

* Harry Eagar can be reached at heagar@mauinews.com. Staff Writer Ilima Loomis contributed to this story.
Dear Chair Thielen and Members of the Commission:

HC&S plays an important role in creating job opportunities to this community. Not only does it directly provide 800 well-paying jobs for Maui residents, HC&S also plays an unduplicated role in broader work force development on Maui with its Apprenticeship Training Program. Initiated in 1962 in partnership with the union, the apprenticeship program today is offered to nearly 220 HC&S employees, providing skills training to enable them to be certified carpenters, electricians, mechanics, plumbers, machinists, welders, sheetmetal workers, power plant operators, and other trade professions. HC&S fully funds the program, including wages, benefits and books at a cost of over $175,000 per employee. The employee in turn invests approximately 7600 hours over 4 years. Many HC&S apprentices have gone on to work for the County of Maui, MECO, the State DOT, various Maui hotels and construction companies. Equally as many have risen to higher level jobs within HC&S.

HC&S is an essential part of technical skills training for Maui businesses. While Maui Community College and the Carpenter’s Trades Program also provide excellent skills training, they are narrower in scope of career choices than the HC&S program. It is extremely important to the economic infrastructure of this island that HC&S remain viable. The Hawaii Department of Labor unequivocally states that there is no comparable program in Hawaii. There will be many unintended consequences, with broader impact on this community, should HC&S close its doors.

Michael Jensen
P.O. Box 72
Kula, Hawaii 96790
4.0  Ecolab, Julie Watts

4.0-1

4.0-2
November 5, 2009

Commission on Water Resource Management
Department of Land and Natural Resources
Box 621
Honolulu, HI 96809

Re: Instream Flow Standard Assessment Reports

Chair Thielen and Members of the Commission:

My name is Julie A. Watts, District Manager at Ecolab Inc. I am very concerned about the impacts of upcoming East Maui IIFS decisions on HC&S and agriculture as a whole in Maui.

Our company provides water and process treatments to the plant. They are our largest customer in the state and critical to our operations.

If HC&S’s viability is reduced it will inevitably lead to reduction in personnel and support staff for our organization. That will lead further to relocation of some staff to mainland locations. We maintain warehousing, local offices and personnel to support our customers. We would no longer be able to maintain such operations/services. This would also damage an already delicate island/state economy. I have worked in the sugar industry for years and have seen many plants shut down. What has been left behind is all too often a complete degradation of the community. For business reasons and love of this island I hope we can prevent any such occurrences.

I respectfully request that you consider the impacts on businesses such as Ecolab Inc., in your evaluations. We are all part of the Maui Community and would appreciate your understanding of the impacts on all of us in your final determination.

Thank you.

JULIE A. WATTS  
District Manager  
Ecolab Water Care Services

ECOLAB  
1826 Wet Pa Loop Suite #9  
Wailuku, HI 96793

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4.0-3
November 4, 2009

Commission on Water Resource Management
Department of Land and Natural Resources
Box 621
Honolulu, Hawaii 96809

Re: Interim In-stream Flow Standard

Dear Chair Thielen and Members of the Commission:

I would first like to acknowledge your efforts to reconcile a range of disparate economic, environmental, Hawaiian cultural and agricultural values related to the allocation of water for stream flows, water resources for agriculture, residents and farmers of Maui.

Over the past months, many in our Maui community have been following the developments related to these prospective water allocation decisions. Reading that the future of agriculture in the central plains and the well-being of 800 HC&S workers and upcountry Kula farmers may be jeopardized is alarming. As Maui already confronts the challenge of maintaining and developing a limited number of economic sectors, placing more and a major number of workers at risk through any contemplated reduction of water resources would aggravate an already precarious unemployment and economic condition. As you may possibly know, UH Maui Community College experienced its highest enrollment increase in recent decades this past Fall. The student numbers grew by 28 percent due, to a significant extent, to the job losses and economic downturn occurring in our community and state.

While the cultural value and environmental importance of water distribution should not be diminished, the impact on our neighbors and residents in the numbers that would be affected should also be considered. If there were a clear solution to identifying the water sources to continue retaining employment for 800 HC&S employees and address Hawaiian cultural values and needs, this would be the obvious course. Without an apparent path to a clear solution, a phased approach might be explored to begin restoring flows to streams while keeping HC&S and the 800 employees as well as other farmers in place. This might provide additional time to design a solution where all facets and interests of this issue could be balanced and addressed.

The decisions that are made will not only affect Maui’s Hawaiian cultural context, agriculture industry but could potentially, dramatically and negatively transform the economic well-being for
workers in agriculture and eventually visitors and that industry if the current agricultural acreages
were not supported. I have not examined all of the data nor claim to have the answers, I am just
encouraging the Commission to consider all the implications of its decision. By incrementally
balancing its allocations, positive movement towards addressing authentic Hawaiian cultural needs
may be possible without permanently undermining the fundamental economics of an already
beleaguered agricultural community. At the end of a comprehensive and long-term analysis, it may
be determined that Maui and our oceans may have enough water to serve all of our needs without
negatively and permanently compromising the Maui’s cultural, agricultural, visitor, and community
sustainability.

Thank you for your dedication and commitment to balancing these important social, cultural,
environmental, and economic values in behalf of a future for all of Maui. Your decision will affect the
range of opportunities available to our students and graduates. Mahalo for your thoughtful
consideration.

Sincerely,

[Signature]

Clyde M. Sakamoto
Chancellor
UH Maui Community College
October 30, 2009

Ken Kawahara
Commission on Water Resource Management
P.O. Box 621
Honolulu, Hawai‘i 96809

RE: Request for comments on the proposed (DEA) (CDUA) (SCAP) Kaua‘i, Hawai‘i.
O‘ahu, TMK: 4-5-001:006.

Aloha e Ken Kawahara,

The Office of Hawaiian Affairs (OHA) is in receipt of the above-mentioned letter dated July 20, 2009. OHA has reviewed the project and offers the following comments.

OHA recognizes that there is a need to move away from the now somewhat arbitrary instream flow standards (IFS) set in 1988 and towards measurable standards based on best available information. OHA understands that the Instream Flow Standard Assessment Reports (IFSAR) are a compilation of the hydrology, instream uses, and noninstream uses related to a specific stream and its respective surface water hydrologic unit. As such we respect that this is inherently a complex undertaking; however, we urge that Native Hawaiian rights relating to water be given their proper weight in this report.

We do agree that there are complex components that must be considered when setting the IFS and we acknowledge that the Commission has the distinct responsibility of weighing competing uses for a limited resource in a legal realm that is continuing to evolve. In these reports the Commission has been very clear that they will incorporate a wide range of information, including hydrology, instream uses, noninstream uses, and the economic impact of restricting uses into these IFS assessments.

OHA takes this opportunity to respectfully remind the Commission that they have an affirmative duty under both the Hawai‘i Constitution and the State Water Code “to protect and
pronounced in-stream public trust uses.7 Protected public trust purposes include: malefiance of waters in their natural state or resource protection, with its numerous derivative public uses, benefits, and values; domestic use, particularly drinking water; and the exercise of Native Hawaiian and traditional and customary rights, including appurtenant rights and reservations of water by the Department of Hawaiian Home Lands.8

OHA points out that under the public trust, the continuing authority of the State over its water resources precludes any grant or assertion of vested rights to use water to the detriment of public trust purposes.9 As such, while the Commission may consider the wide spectrum of information that is cited to in these reports when setting these IFS, OHA highlights that this does not address the fact that there is a presumptive hierarchy of rights that must be recognized in these IFSAR. OHA does not wish for the Commission to lose focus on these primary colored rights in the IFS spectrum that your agency is using.

Further the foundational public trust doctrine that guides the Commission and that is embedded in the Water Code itself includes “Native Hawaiian and traditional and customary rights” as public trust purposes.10 Additionally, the Hawai‘i Constitution, article XII, section 7 “places an affirmative duty on the State and its agencies to preserve and protect traditional and customary native Hawaiian rights, and confers upon the State and its agencies the power to protect these rights and to prevent any interference with the exercise of these rights.” Also, the very State Water Code itself requires that: “adequate provision shall be made for the protection of traditional and customary Hawaiian rights.”11

Therefore, OHA also urges that the water rights of appurtenant kuleana and taro lands must not be abridged or denied nor shall the reserves of water set aside for Hawaiian Home Lands be diminished including in combination with other proposed projects in the area. Naturally, diverters must show that they are doing no harm to downstream users. However, they must also, at a minimum, return sufficient water to the streams to ensure that the public trust purposes are protected, including restoration of habitat for fauna and flora as well as cultural practices.

1 In re Waiahole Etch Combined Contested Case Hearing (Waiahole I), 94 Haw. at 141-43, 146, 153, 9 P.3d at 453-55, 458, 465.
3 Waiahole I, 94 Haw. at 141, 9 P.3d at 453.
4 Waiahole I, 94 Haw. at 137, 9 P.3d at 449.
6 See, Hawaii Revised Statutes (HRS) section 174C-2.
7 See, HRS section 174C-101.

Ken Kawahara
October 30, 2009
Page 3

OHA also seeks to ensure that this process does not create additional burdens for injured parties. We do not wish to see an insuperable burden created for or shifted to our beneficiaries. For example, asking applicants with unproven appurtenant rights to provide a certificate of search, title report or a chain of title for their parcel without facilitating this process would create a difficult and prohibitive bar for those individuals.

Further, asking injured parties to monitor and provide data to the Commission to demonstrate harm would also impermissibly shift a burden. The Court has made clear that water diverters and the Commission bear the “burden of establishing that the proposed use will not interfere with any public trust purposes.”12 (emphasis added) The burden on the diverters and Commission includes an obligation “to demonstrate affirmatively that the [diversion] would not affect [trust purposes];” in other words, the absence of evidence that the proposed use would affect [trust purposes] was insufficient to meet the burden imposed . . . by the public trust doctrine, the Hawai‘i Constitution, and the Code.13

Of additional import is the necessity for the Commission to accompany funding, staff and equipment to any IIF decision. Any determination will require monitoring and enforcement to initiate and continue the implementation of these standards. Without additional resources dedicated towards these determinations, these IFS will be rendered impotent.

Thank you for the opportunity to comment. If you have further questions, please contact Grant Arnold by phone at (808) 594-0263 or e-mail him at graanta@oha.org.

‘O wai iho nō me ka ‘ōia‘i’o,14

Clyde W. Nāmā’o
Administrator

C: OHA Maui CRC

6.0-3

6.0-4

8 In re Wa‘i‘ola o Moloka‘i, Inc., 103 Haw. 401, 442, 83 P.3d 664, 703 (2004) (emphasis added); see also Waiahole I, 94 Haw. at 143, 9 P.3d at 455 (quoting Robinson v. Aromaa), 65 Haw. 641, 649 n.8, 658 P.2d 287, 295 n.8 (1982) (“The burden of demonstrating that any transfer of water was not injurious to the rights of others rested wholly upon those seeking the transfer.”); see also Reppu, 65 Haw. at 554, 656 P.2d at 72 (the “continuing use of the waters of the stream by the wrongful diversion should be contingent upon a demonstration that such use will not harm the established rights of others”)
9 Id.
Dear Water Commission,

I am a farmer in Upcountry Maui and have been for over 40 years. I have grown many crops commercially, including livestock, poultry, Christmas trees, tree crops, pineapple and a nursery. In order to survive in Agriculture one must change their crops to meet the market demand and the pests at hand.

I am concerned, with the possible ruling on the stream in East Maui that now supply much of our irrigation water. While Hawaiian Homes has unlimited use of the water from East Maui Streams and we continue to have more growth Up Country, when we hit a drought, all of us will suffer, while we let water go running into the Ocean.

We have a new State sponsored ag water line that has been put in for years over good farm land and yet the County says there is no water to put in it. So we have spent millions of dollars for this new pipe and not one ag meter is on it.

I think the State of Hawaii has been negligent in their handling of Maui’s water and that to let water run down into the Ocean with out addressing the storage and infrastructure problems first is po ho and a crime to the people in Agriculture. We can never feed our people with any sustainability if we don’t have a reliable supply of water for our crops and livestock.

Sincerely,
Doug MacCluer
360 Hoopahua Dr, Pukalani, 96768
Robert M. Ito

To The Commission of Water Resource Management,

I've been farming in Kula Maui for the past 35 years. We grow head cabbage year-round and romaine, onions and bell peppers seasonally, on 20 acres which we own. Kula is a very dry part of Maui, which makes it good for vegetable farming. But we need the water from East Maui to continue our operation. It is vital for us in continuing our family farming.

We employ 2 full-time workers in addition to myself, and my family help. Our water bill ranges $911.00 (during rainy season) - $2,140.00 every 2 months this year. We gross on the average of $25,000 / month on vegetable sales.

We support our local businesses and market our produce through our coop - Maui Cooperative Farmers Exchange.

I'm asking you to allow continued use of stream water for our homes and farms. We need a continuous supply of water to be successful in farming.

Sincerely Yours,

Robert M. Ito
Wow, what a pathetically weak-willed direction concerning the HC&S water diversions. I see one of the state water commissioners is a former sugar worker. How many other commissioners are influenced by the long arm of sugar? HC&S is absolutely uncompromising in every manner of their manufacturing process. And now they are rewarded for being a filthy, uncompromising, unprofitable industry? Too big to fail? Fact is, it isn’t that ‘big’, and if our government officials started acting seriously in the interest of self-sufficiency, sustainability, and agricultural diversity, the 800 workers would be kept plenty busy.

I am seriously unimpressed by the continued short-sightedness of DLNR, HC&S and, now, the state water commission. This is a serious slap in the face to the efforts of residents who actually care about the environmental health of the island and don’t fall prey to insidious politics. What a joke.
Date

Ms. Laura Thielan, Chair
Members of the Commission on Water Resource Management
P. O. Box 621
Honolulu, HI 96813

Dear Chair Thielan and Members:

We understand that the Commission on Water Resource Management will be holding a hearing and making a decision on Interim Instream Flow Standards for the remaining East Maui streams. It is our hope that the Commission will make a decision that will provide water for the needs of all Hawaiians who benefit from the stream water including those who live next to the streams and those that depend on water being diverted from the streams.

Our Association is part of the Department of Hawaiian Home Lands Kula project. Residential and farm lots have been created for the beneficiaries. Approximately 200 lots have been built on with many more to go. We hope there will be water to allow these homes to be built and for the existing homes and farms to continue their existence.

Thank you for the opportunity to express our concern.

Sincerely,

Barbara J. L. Purdy

Resident of Waianui Hawaiian Homesteads from
Former 2007 – 2009 Board of Directors
December 11, 2009

Ms. Laura Thielen, Chair
Members of the Commission on Water Resource Management
P.O. Box 621
Honolulu, HI 96813

Dear Chair Thielen and Members:

It is my understanding that the Commission on Water Resource Management will be holding a hearing and making a decision on Interim Instream Flow Standards for the remaining East Maui streams. The continued availability of water is critical not only to the current users, such as nonprofit agencies such as ours, but to our overall community.

The J. Walter Cameron Center and its 20 resident nonprofit agencies serve over 30,000 people a year through the agencies programs and supporting other nonprofit and community groups by providing meeting facilities. If HC&S and some up-country farms cease to exist, many of their employees and family members will need the support of nonprofit agencies. This may lead to several challenging issues. First and foremost, agencies will be hard pressed to provide additional services as the bad economy has already increased the demand on agency services. Second, funding is difficult to come by due to the economic pressures on the community and having a strong non-profit supporter such as HC&S gone will make maintaining programs difficult. Third, reduction in water availability could also affect the ability of several programs to continue the current level of service provided to the community.

Many of our agencies have benefited by the generosity of HC&S as they provide services and financial support. We value such a wonderful community partner and hope for their continued success.

Thank you for the opportunity to express our concern.

Sincerely,

César E. Gaxiola
Executive Director

César Gaxiola, Executive Director
95 Mahalani Street
Wailea, Maui, HI 96793-8873
Ph: (808) 244-5146
Fax: (808) 241-1873
E-Mail: OCE@jwcameroncenter.org

J.W. Cameron Center
Website: www.jwcameroncenter.org
Website: info@jwcameroncenter.org
December 14, 2009

Ms. Laura Thielen, Chair
Members of the Commission on Water Resource Management
P.O. Box 621
Honolulu, Hawaii 96813

Dear Chair Thielen and Members:

I understand that the Commission on Water Resource Management will be holding a hearing on December 16, 2009 on Interim Instream Flow Standards for the remaining East Maui streams. Our family goes back many generations as long term residents of Kula. We have always been concerned about our community, whether it is through our neighborhood store or our family construction company, both of which have been in operation since the early 1900’s.

We have endured the hardship of droughts and water system failures which have not provided adequate water for our community. Although difficult on us, it is even more difficult for our friends and neighbors in the farming community. They suffer the most in times when water availability is reduced or not available. This should not be the case as there seems to be enough water to support both sides of the issue by analyzing what are the actual user demands from people adjacent to the streams and current uses in upcountry.

Please consider the impacts on existing users if you increase the amount of water that goes back into the streams. Reduction of water availability is like imposing a man-made drought in up-country. The impacts of this action would be so harmful to many of the upcountry residents.

Thank you for considering my concerns.

Sincerely,

Roderick Fong
To the Commission on Water Resource Management:

I am in strong support of the staff recommendations for the Interim Instream Flow Standards for the 19 streams in East Maui. Water used for agriculture produces a usable product while water flowing mauka to makai does not.

The amount of sugar produced by HC&S is directly tied to the amount of water that the sugarcane receives. Water for HC&S will result in the production of a useful food product and will provide some groundwater recharge. Please provide enough water for HC&S to continue operations and keep our central valley green.

I urge you to support the staff recommendations for the Interim Instream Flow Standards for the 19 East Maui streams.

Thank you for the opportunity to submit written testimony for those of us who cannot attend the hearing.

Kathy Morris
Kihei, HI
Chair Thielen,


Thank you for your consideration.

Greg Heyd    Branch Manager BEI-Maui
Greg Heyd
300 Pakana Street
Wailuku Hawaii 96793
808 244-3761
E-mail gheyd@beihawaii.com

12/16/09

Commission on Water Resource Management
Department of Land and Natural Resources
Box 621
Honolulu, HI 96809

Re: Instream Flow Standard Assessment Reports

Chair Thielen and Members of the Commission:

My name is Greg Heyd, Branch Manager for BEI-Hawaii operations on Maui. BEI-Maui has ten employees. As a vendor of fertilizers, agricultural chemicals and industrial chemicals, Maui's agriculture community are among our biggest customers. Their future viability will have an impact on our operations.

HC&S and Upcountry farmers utilizing water from the 19 streams in consideration, represent sales exceeding five million dollars. It is a very significant portion of our business. As their viability is challenged, we see reductions in sales, which in turn affects our viability. Having a large customer such as HC&S allows us to spread our overhead costs resulting in containing costs for all of our customers.

I respectfully request that the secondary benefits of off stream uses by HC&S and Upcountry farmers and ranchers be given serious consideration as decisions are made regarding this issue. BEI-Hawaii is in strong support of the staff recommendations for the Interim Instream Flow Standards for the 19 streams in East Maui.

Thank you for your consideration.

Greg Heyd
Branch Manager BEI-Maui
December 14, 2009

The Honorable Laura Thielen
Chairwoman
State Commission on Water Resource Management
Department of Land and Natural Resources
1151 Punchbowl Street
Honolulu, Hawaii 96813

Dear Chairwoman Thielen and Commissioners:

We, the mayors of the four counties, urge the Commission on Water Resource Management to be mindful that the policy underlying the State Water Code is that water resource decisions should support, not undermine, land use plans and policies developed by the counties.

We write this letter because of the very important water cases now before you. As had been reported by the news media, your decisions in these cases have “the potential to change the face of Maui.” Although these cases are on the island of Maui, all of the mayors are watching with keen interest and concern because of the implications your decisions in these cases may have for each of our counties. We are very concerned that a decision by the Water Commission, especially in a contested case process involving only a handful of parties with special interests, can “change the face” of a county and overturn county land use plans and policies.

Under the State Water Code, counties have a very significant role. The Water Code repeatedly states that water decisions must be in accord with county land use plans and policies; water decisions are supposed to follow and support land use plans – not the other way around.
County land use plans are the result of years of planning to come up with coherent plans that address myriad interests, such as housing, employment, economy, health and safety, a clean environment, education and culture, and building a better future for our residents. It is never an easy task and there are trade-offs and compromises throughout the planning process, always remembering that the objective of our plans is to provide the greatest good for the greatest number. With so much of our counties’ time and energy having been expended in developing our comprehensive land use plans, you can well understand our concern that one or two decisions from the Water Commission could “change the face of” our counties.

Special notice must be taken of the essential role that agriculture plays in every one of the four counties, even in the City and County of Honolulu, the most urbanized one. Agriculture is vitally important as an economic engine, provider of jobs, for food security, for keeping much of the landscape green, for energy security, and for preserving a rural lifestyle. Policies that support agriculture and for keeping large swaths of land in agriculture are important elements in all of the counties’ land use plans.

To have a viable agricultural industry, adequate irrigation water at reasonable cost is critical. Farming is a precarious business and farmers take great risks, gambling on things over which they have no control – the weather, global markets, changing tastes and fads, etc. Without reasonable assurance of sufficient water at reasonable cost, farmers will choose not to farm. If enough farmers choose not to farm, if enough lands are taken out of agricultural production, then our county land use plans will unravel and may result in major disruptions in many different segments of our communities.

The Water Commission has the very important responsibility of protecting and managing our water resources. But in carrying out this responsibility, the State Water Code mandates that you not usurp the counties’ role as the driver of land use plans and policies.

We therefore urge you to be mindful of county land use plans and policies, and especially mindful of the vital importance of agriculture.

Aloha,

Bernard P. Carvalho, Jr.  Mufi Hannemann
Mayor of Kauai  Mayor of Honolulu

William P. Kenoi  Charmaine Tavares
Mayor of Hawaii  Mayor of Maui

15.0-3
December 14, 2009

Ms. Laura Thielen, Chair
Members of the Commission on Water Resource Management
P. O. Box 621
Honolulu, HI 96813

Dear Chair Thielen and Members:

We understand that the Commission on Water Resource Management will be holding a hearing and making a decision on Interim Instream Flow Standards for the remaining East Maui streams. It is our hope that the Commission will make a decision that will provide water for the needs of all Hawaiians who benefit from the stream water including those who live next to the streams and those that depend on water being diverted from the streams.

Our Association is part of the Department of Hawaiian Home Lands Kula and Keokea project. Over (450) residential and (65) farm lots have been created for the beneficiaries. Approximately (250) lots have been built on —— with many more to go. DHHL has over (200) additional residential lots in the construction pipeline.

We hope there will be water to allow these homes to be built, and for the existing homes and farms to continue their existence.

Thank you for the opportunity to express our concerns.

Sincerely,

Doreen N. Gomes
Waiohuli Lessee
Please see the attached letter for my written testimony for the meeting scheduled on Maui on December 16, 2009.

Marilyn Chapman
Vice President, Sales & Marketing
Maui Disposal Co., Inc.
280 Imi Kala Street
Wailuku, HI 96793
Phone: 808-242-7999
Direct Line: 270-5680
Fax: 808-242-9471
Cell: 808-870-8725
email: marilynchapman@mauiwaste.com
December 15, 2009

Commission on Water Resource Management
Dept. of Land & Natural Resources
Box 621
Honolulu, HI 96809

RE: Interim Instream Flow Standards

Dear Water Resource Commissioners:

Maui Disposal finds it imperative that the commission on Water Resources Management come up with a fair and balanced decision that supports water for community use including agricultural uses.

We are in strong support of the staff recommendations for the Interim Instream Flow Standards for the 19 streams in East Maui. These recommendations will ensure sufficient water to save Hawaiian Commercial & Sugar, which in turn will help save other businesses that provide service or products to HC&S. Maui’s community is already struggling with the closure of many businesses; please do not make a decision that will force the closure of HC&S.

Thank you for your consideration of this matter.

Sincerely,

Marilyn Chapman
VP, Sales & Marketing
Maui Disposal Co., Inc.
Dear Chairman Thielen:

I will not be able to attend tomorrow's Water Commission meeting here on Maui. I would like to submit the attached testimony for the commission's consideration.

Thank you very much.

Sincerely,

Mark Kijima

Mark H. Kijima  
241 Puanani Place  
Kula, Hawaii  96790-8487  
Phone: (808) 878-6670  
Mobile: (808) 264-0087  
E-Mail: kgma@maui.net
TESTIMONY BEFORE THE COMMISSION ON WATER RESOURCES MANAGEMENT

TESTIMONY ON: DLNR Staff Proposal on Interim Instream Flow Standards for East Maui

HEARING DATE & TIME: Wednesday, December 16, 2009 at 1:00 PM

HEARING LOCATION: Paia Community Center

Dear Chairman Thielen and Commission Members:

I urge the Commission on Water Resource Management to accept the 19 petitions prepared by the Department of Land and Natural Resources staff to amend the interim in-stream flow standards for the 16 surface water hydrologic units in East Maui. When taking into consideration the previous amendments to restore 12.21 million gallons of water per day to eight other streams in the watershed, I believe these proposals reflect a pragmatic balance between current existing users and the environment.

My name is Mark Kijima. I own a small farm in Kula. I am an off-stream user who relies entirely on water from east Maui. I am also employed by BEI Hawaii, a company that is supported indirectly by water delivered from east Maui to central Maui by sales to agricultural businesses such as HG&S that receive off-stream water as well. As many other small businesses on Maui, BEI Hawaii’s success is tied directly to the success of these agricultural businesses.

Over the past few years, I have seen agriculture here on Maui in a steady decline and have seen agricultural landowners struggle to maintain their properties in active agriculture. It is critical that off-stream users continue to receive an adequate volume of water in order for agriculture to thrive and carry on successfully.

Again, I urge the Commission to accept the DLNR staff proposal.

Thank you for your consideration.

Thank you for this opportunity to present this testimony.
Aloha,

We respectfully submit the attached letter for the State Water Commission regarding in-stream Flow Standard Assessment for Maui County.

Mahalo,

Steve Wetter
General Manager
Maui Petroleum Inc.
(808) 270-2800
Commission on Water Resource Management  
Department of Land and Natural Resources  
Box 621  
Honolulu, HI 96809

Re: IIFS for 19 East Maui Streams

Chair Thieler and Members of the Commission:

My name is Steve Wetter, General Manager of Maui Petroleum Inc. We are very concerned about the impacts of upcoming East Maui IIFS decisions on HC&S and agriculture as a whole in Maui. We are in strong support of the staff recommendations for the Interim Instream Flow Standards for the 19 streams in East Maui.

I respectfully request that you consider the impacts on the Maui Community in your final determination.

Mahalo,

Steve Wetter  
General Manager  
Maui Petroleum Inc.
Commission on Water Resource Management
Kalanimaolu Building
1151 Punchbowl Street, Room 227
Honolulu, Hawaii 96813

Dear Commission members:

On May 24, 2001, the Native Hawaiian Legal Corporation (NHLC) filed a Petition to Amend the Interim Instream Flow Standards (IIFS) for 27 streams in East Maui on behalf of resident taro farmers. Since the acceptance of the petitions in July 2001, the Commission on Water Resource Management (CWRM) has been focused on gathering information for the 27 petitioned streams. Shortly thereafter, NHLC and CWRM staff reached an agreement that efforts would focus on 8 of the 27 petitioned streams: Honopou, Hanehoi, Hulu, Waiokarrilo, Kualani, Pi‘ina‘au, Palaulau, and Wailua Nui Streams. DAR provided input to aid CWRM in its decision for the first eight streams. Subsequently, CWRM began deliberations for setting IIFS for the additional petitioned 19 streams. In this letter, the Division of Aquatic Resources provides recommendations focused on these additional 19 streams.

The Division of Aquatic Resources (DAR) is responsible for the protection and management of living aquatic resources in the waters of Hawaii. The DAR realizes that the Commission on Water Resource Management (CWRM) has the responsibility of balancing the current and future use of multiple uses of water when rendering its decisions on specific Instream Flow Standards. By contrast, the DAR’s recommendations below focus only on the requirements of the native aquatic biota that fall within the scope of our authority, and do not consider additional instream or offstream uses of stream water. This letter provides the DAR’s recommendations for actions that support restoration of native species habitat, migratory pathways for upstream recruiting individuals and downstream drifting larvae, and overall population structure for eight native fish and macroinvertebrate species inhabiting East Maui streams.

The DAR’s recommendations are based on several lines of evidence. First, DAR biologists and technicians spent considerable time and effort surveying habitat and animal populations in these streams. Second, the DAR compared the results of the stream...
surveys with estimates of expected native species occurrence by utilizing the Hawaiian Stream Habitat Evaluation Procedure (HISHEP) analytic model, the results of which for the 19 streams in question (Parham et al., 2009) were provided to CWRM staff on November 20, 2009. Finally, the DAR used available information and the extensive experience of its staff in determining the final list of actions needed to support restoration of native species in these 19 streams. A list of supporting documentation for these recommendations is provided at the end of this letter.

Water diversion structures have two main effects on native amphidromous animals. First, the amount of habitat below a diversion is decreased or eliminated with the removal of water. Second, native animals are entrained by the diversion structure during their upstream and downstream migrations and eliminated from the population. The DAR recommends that stream diversions be modified to allow adequate water to pass downstream and to decrease entrainment. By following this strategy, maximum gains to native species habitat can be realized from a minimal amount of management action. Additionally, as a result native amphidromous animal migration between the ocean and the stream in each life cycle, priority is placed on restoring stream habitat and connectivity in an upstream direction, with actions undertaken at the lowermost diversion first.

While the return of 100% of the diverted water and elimination of diversion structures would be the most desirable IIFS for protection and management of native stream animals, the DAR recognizes that this is not compatible with the ongoing needs for water by the people of Maui. Although the DAR understands that some water will continue to be diverted from East Maui streams to meet such needs, the DAR feels that the continuance of the status quo for all but one of the stream diversions, as proposed in the current CWRM petition, is unacceptable and therefore has provided recommendations for additional restoration actions. Our recommendations represent essential actions that will greatly enhance native species habitat, connectivity, and overall population structure and viability. In no case are additional diversions of stream water recommended.

In the following description of essential actions, recommendations are ordered based on their expected increase in overall habitat for the eight native species of concern. Also, the reported amount of Habitat Units (quantified as 10 m² cells; see Parham et al., 2009) restored may be larger than the total length of restored stream as multiple species may inhabit the same area. The amount of water to be returned at any recommended location would be the amount necessary to achieve 90% habitat restoration based on relationships between habitat and stream flow developed by the USGS for East Maui streams. Modification of diversions to decrease entrainment and increase passage may be required in addition to the modifications to provide sufficient downstream flow.

**Essential Management Recommendations:**

1. **Honomānū Stream** – DAR recommends modification of the Koʻolau Ditch diversion structure to provide for suitable habitat downstream and animal passage at the diversion site. This action would restore approximately 11.6 km of Habitat Units for native species. Currently, much of the lower end of Honomānū Stream is dry, and this action would restore a large amount of stream habitat for many native species. Recruitment of native species has been observed at the stream mouth, but the dry streambed above restricts upstream movement. Reworking of the lower stream section would greatly improve animal migration and increase populations of native animals in this catchment. Additionally, Honomānū Stream empties into a bay where the restoration of stream flow would benefit native estuarine animals, expand nursery habitat for marine species, and improve larval dispersal for various native stream animals.

2. **Puuhokamoa Stream** – DAR recommends modification of the Manuel Luis Ditch and Wailoa Ditch diversion structures to provide for suitable in-stream habitat and to allow animal passage at both diversion sites. These two actions would restore approximately 7.6 km of Habitat Units for native species. Puuhokamoa Stream has additional diversions upstream of the Wailoa Ditch, but modifications of these diversions would provide less ecological benefit. Native aquatic species were observed in this stream, and improved in-stream habitat and connectivity as proposed would greatly enhance the overall ecological viability of this stream.

3. **Waikamoi Stream** – DAR recommends modification of the Manuel Luis Ditch and Wailoa Ditch diversion structures to increase suitable in-stream habitat and allow animal passage at both diversion sites. These two actions would restore approximately 5.8 km of Habitat Units for native species. Waikamoi Stream has additional diversions upstream of the Wailoa Ditch, but modifications of these diversions would provide less benefit to native species and are not proposed herein.

4. **Kopīlīʻula Stream** – DAR recommends modification of the Koʻolau Ditch diversion structures on both the main channel and on the Puaʻakaʻa tributary to provide for suitable habitat downstream and animal passage at the diversion sites. These actions would restore approximately 5.1 km of Habitat Units for native species, which were observed in this stream. Additional habitat provided below the diversion and increased connectivity of habitats above and below the diversion would further expand native animal habitat and improve viability of populations.

5. **East Wailua Iki** – DAR recommends modification of the Koʻolau Ditch diversion structure to provide for suitable habitat downstream and to increase upstream migration of native animals. This action would restore approximately 4.4 km of Habitat Units for native species. Restoration of flow would further enhance the overall stream productivity.

6. **West Wailua Iki** – DAR recommends modification of the Koʻolau Ditch diversion structure to provide for suitable habitat downstream and animal passage at the diversion site. This action would restore approximately 4.0 km of Habitat Units.
for native species. Flow restoration will provide additional habitat in the lower, middle, and upper reaches.

7. Makapipi - DAR recommends modification of the Ko‘olau Ditch diversion structure to provide for suitable habitat downstream of the diversion, and animal passage at the diversion site. This action would restore approximately 3.8 km of Habitat Units for native species.

8. Hanawlii Stream - DAR recommends modification of the Ko‘olau Ditch diversion structure to provide for animal passage at the diversion site. This action would link the lower section of the stream with the upper section, and would restore approximately 3.5 km of Habitat Units for native species. No restoration of water is required except that necessary to provide a wetted pathway past the diversion structure. The lower section of Hanawlii Stream is highly productive habitat for native stream animals and has large springs which provide flow and habitat even during drought periods. Overall, Hanawlii Stream is an outstanding stream with a healthy and diverse population of native species, and therefore reconnecting the upper and lower sections would protect and enhance the ecological integrity of this particularly valuable stream.

The above recommendations propose flow restoration on only 8 of the 19 streams under consideration, but would result in restoration of 45.8 km of native species Habitat Units out of a total of the 67.3 km of Habitat Units currently lost as a result of the major ditch diversions. They therefore represent a significant return of ecological function based on a modest investment in flow restoration, and we urge their favorable consideration.

Sincerely,

DAN A. POLHEMUS, Administrator
Division of Aquatic Resources

References:


2000-7
Dear Staff and Commissioners of the State of Hawaii DLNR Commission on Water Resource Management:

This testimony is in regards to:
Petition to Amend the Interim Instream Flow Standards for the Surface Water Hydrologic Units of Waikamoi, Puohokamoa, Kaipusena, Punalau, Honomanu, Nuaialua, Ohia, West Walluaiki, East Walluaiki, Kopiliuli, Waiohue, Paakea, Waiaka, Kapaula, Hanaxi, and Makapipi, Maui

I understand that Staff has recommended that barely any water will be released for the above streams. And even if there is a tiny amount released “just for show” it will not do any good if the water dries up on the way down and never reaches taro farmers and lo‘i as well as for aquatic life and for others who gather from the streams. Is this equitable, fair and balanced?

We are at a crucial and critical time when our state needs to be sustainable and not dependent on importing 90% of our food. Growing of food for local consumption requires clean water. Everyone is talking about sustainability and the need for that to happen in our state. But, no one is doing anything about it, (especially our government agencies), except the small farmers. They are the ones feeding their families and communities even though their acreage and incomes may not be recorded at NIH. If you accept the recommendation of Staff to cut the flow, you will be contributing directly to breaking up the social, economic and environmental health of our communities.

I strongly urge you to gather more facts and information from the grassroots level before making a decision. Please listen to the taro farmers, the communities and people who will be directly impacted by this. Unfortunately this recommendation smells like a lot of pressure from big businesses, like big ag, development and politics. Please delay this decision if you have any doubts what so ever.

I just went to your website and i saw your thoughtful words: “Ke Kahawai Pono “The trustee who oversees the rightful sharing of water” I hope that you take your motto seriously and ask that you please do the job you have been entrusted to do and do what is pono. Also I saw a picture of kalo on the website. How will our kalo grow without water? If your decision is to continue to divert water away from the small valleys that are capable and have historically produced taro, then please take that kalo picture off of your website. Taro is so sacred, spiritually, culturally and as a food has fed and nurtured people for over a 1000 years and continues to do so. Last year, the legislature passed a bill, signed by Governor Lingle, declaring taro as Hawaii’s state plant. Let us all do our part in truly taking care of taro. Simply put, what more do we need to say or do.
As a member of the state Taro Security and Purity Task Force, we visited the Keanae and Wailua taro producing areas earlier this year in May 2009. We saw limited taro growing due to the small amount of water feeding these once highly productive taro lands. The recommendations of staff will contribute to further shrinking the overall state's production of taro, stripping taro farmers of their livelihood. The amount of water flow recommended is shameful.

Please make a thoughtful equitable decision or sleep on it if you need more time. please.

Mahalo,

Chris Kobayashi
Waiʻoli, Hanalei, Kauaʻi - Taro Farmer
Taro Security & Purity Task Force - Member
P.O.Box 135
Hanalei, Hawaii 96714
To Whom It May Concern:

Please find the attached letter.

Thank you.

United Auto Parts, Inc.
Edwin K. Fujinaka
President and CEO
808-871-6266
December 15, 2009

Commission of Water Resource Management
Department of Land and Natural Resources
Box 621
Honolulu, HI 96809

RE: IIFS for 19 East Maui Streams

Chair Thielen and Members of the Commission:

I am Edwin K. Fujinaka and am President and CEO of United Auto Parts, Inc. We are a family owned and operated business on Maui that was founded by my father and mother back in 1947. In 63 years we have grown from a mom and pop store to six NAPA Auto Parts stores with 80 employees.

We support the staff recommendations for Status Quo IIFS for the 19 streams in East Maui. HC&S is a major customer of ours. We depend on them, and I know that a lot of other businesses on Maui depend on HC&S for their well being as well. The economy on Maui at the moment is fragile, just as it is all across the nation. Maui must protect companies like HC&S because our economy depends so much on them.

We ask for your support of the staff recommendations for Status Quo IIFS for the 19 streams in East Maui.

Thank you very much.

Sincerely,

United Auto Parts, Inc.

Edwin K. Fujinaka
President and CEO
Aloha,

Attached is testimony related to the EMI case.

Mahalo,
Glenn I. Teves  
P.O. Box 261,  
Kualapuu, Molokai, HI 96777  
Email: gmolokai@gmail.com

December 10, 2009

State Commission of Water Resource Management  
Kalanimoku Building  
Email: dnr.cwrm@hawaii.gov

RE: Setting Interim Instream Flow Standards for East Maui Streams

Aloha Water Commissioners,

My name is Glenn Ioane Teves, and I've been a dryland taro producer in Hoolehua, Molokai for over 20 years. I also serve as a County Extension Agent on the island of Molokai with a broad background and involvement in agriculture, water, and resource management. In addition, I'm the Vice-Chairman of the State Taro Security and Purity Task Force. In this testimony, I represent myself and my family.

I have been an active participant in every water action and case on Molokai since the early 1980's, including enactment of the State Water Code, designation of the island of Molokai as a Special Water Resource Management area, the Waiola case, and the Kukui case. I will also be involved in upcoming cases to be filed in court against CWRM early next year.

I see a big cloud coming. Just heavy clouds, but no rain. I wouldn't want to be responsible for killing a stream, and I hope the commission will shoulder this responsibility within this context, because that's what it really is. Who advocates for the environment if CWRM doesn't do it? This is the whole purpose of your existence. In CWRM's action on Maui what should prevail are the law, common sense, and science. Looking at CWRM's dismal track record, I'm not expecting miracles. Appeals to CWRM decisions before the State Supreme Court is now 0-4.

My concern is, based on your track record of lack of foresight and poor decision making, you will not protect the environment in a way that it requires. We cannot continue to be our own enemy and short-change the environment. I hope you will err on the side of the environment, and also complete your work by giving the taro farmers the water they need to grow a decent crop.

The hierarchy of water law according to the State Water Code is very clear with no wiggle room. EMI and CWRM and A&B are not taro growers, this is very clear to me. These families farming along the East Maui rivers grow taro, and the law enacted to protect them is broken, and it was broken by the state body mandated to protect them. What happened?

I have contended all along that it would have been simple for HC&S to just give the taro farmers the water they need and this could easily be determined. By doing this, HC&S would do the right thing and also be holding the taro farmers accountable. The whole issue of interim in-stream standards would not have come up if HC&S took the initiative. Instead, greed preceded their better judgment and they did more than shoot themselves in the foot; they shot off both feet. I also surmise that sharing is not part of their corporate vocabulary.

In the ongoing East Maui water case, it was shown that HC&S was using water over and above what was required for optimal sugarcane growth. I call this wasting and hoarding water. This is water banking, and is not allowed in the State Water Code. HC&S has more than enough water to grow all the sugarcane they want; why not be a good citizen and member of the Maui community and share it with others? To even use their dedicated workers as pawns in this fight by laying them off clearly indicates what kind of company HC&S and A&B really are.

Driving out of Kahului town and before reaching the upcountry junction, you can see HC&S watering fields of weeds to get rid of excess water. This is wash water from the mill that could be recycled or even used by farmers. What HC&S needs to do is to work with farmers, which it finds very difficult to do. So who are the unreasonable ones?

I hope CWRM clearly understands stream and nearshore ecology, and that the water must flow from the mountain to the sea, unobstructed. This is key to the survival of diadromous species such as o'opu, and also opa'ae and hihiwai. In addition, the mixing of fresh with brackish water in nearshore environments create a critical habitat for egg-laying of many of the reef fish species we enjoy eating.

Breaking this connection destroys the ability of this system to be healthy and dynamic, and kills off the o'opu. One of the primary responsibilities of the CWRM is the protection of native species. Healthy streams are a matter of life or death, not only for these stream and ocean organisms, but also for humans through the recharging of our aquifers.
In closing, I look forward to seeing that CWRM make the right decision with all the information available, and err on the side of the environment. Mahalo.
Good Morning,

Please see the attached with our thoughts on the issue. This submission is for the hearings now taking place.

Aloha,

Dave Young
October 28, 2009
Commission on Water Resource Management
Department of Land and Natural Resources
Box 621
Honolulu, HI 96809

Re: In Stream Flow Standard Assessment Reports

Chair Thielen and Members of the Commission:

My name is Dave Young (owner) of Wai Irrigation, Inc. Our company has been working with HC&S for over 16 years. We believe that the future viability of HC&S will be negatively affected by the IIFS decisions made on the 19 streams in East Maui.

Many of us here at Wai Engineering have long term friends (20 plus years) at HC&S that have been negatively impacted for the past decade due to drought conditions and consequent layoffs and furloughs. The conditions will only get worse if the water supplies are inadequate.

As an agricultural engineering company, we are very familiar with the irrigation practices at HC&S. They have made the conversion from furrow irrigation with an irrigation efficiency of about 60% to drip irrigation that has an irrigation efficiency of about 80%. Their systems use the latest technology to get the highest attainable irrigation efficiency. When surface water is not available from the ditch system they must pump from ground water that has more saline content. That situation leads to less cane production and higher cost for them.

Another factor that can’t be overlooked is the contribution of the surface water to recharge of the ground water aquifer. Reduced recharge not only impacts HC&S but also negatively impacts the county water system.

Besides the concern for the viability of one of the major business elements for Maui and the State of Hawaii, please keep in mind the inter relationship of ground water and surface water as IIFS decisions are considered.

Thank you for listening to our concerns.

Respectfully Submitted,

__________________________
David A. Young

cc: file
Attached is my testimony; I am unable to be present in person today. For background information you may refer to my testimony in October, Aloha Gerry Ross.
Aloha Commission members,

I regret that I cannot be in personal attendance of today's hearing, we are an active small farm in Kula and on many days there is just too much going on to get away. I did testify at the Paia hearing last October. I have had a chance to read through some of the staff recommendations regarding the restoration of stream water in East Maui and I am quite disappointed in the recommendation of "status quo". I believe that my voice is amongst many others that has requested a balanced approach between instream and offstream uses: the proposed recommendations seem to be tilted entirely towards offstream users, of which I am one.

In October I concluded my testimony with the following passage: "I believe that ultimately a collaborative effort is needed to resolve this problem...as a friend has always commented to me in areas of conflict, it is a race to the middle ground. I look to the Commission for finding that middle ground." The current resolution is not middle ground. There is much to be done here that should include asking HC&S to look into drawing more heavily on well water, instigating repairs to the ditch system, and getting Maui County to repair the flumes that feed the Upcountry water systems and get started on the much discussed 300 million gallon reservoir in Waikamoi. I urge you to defer a decision and look deeper into the alternatives that would truly bring balance to water diversion and ecosystem health in East Maui.

Mahalo, Gerry Ross and Janet Simpson
To <sonaga@hcsugar.com>, <dlnr.cwrm@hawaii.gov>
cc
bcc
Subject east maui instream flow standard

-----Original Message-----
From: postmaster@aeshawaii.com [mailto:postmaster@aeshawaii.com]
Sent: Wednesday, December 16, 2009 9:06 AM
To: pacheco@aeshawaii.com
Subject:

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Scanned From Kyocera KM-2560 MFP
Maui Office
-------------------
December 16, 2009

My name is Hank Pacheco, I am the president of Alpha Electric Supply Company.
I am in strong support of the staff recommendations for the interim instream flow standards for the 19 streams in East Maui.

Alpha Electric employs 21 people and HC & S is a very important part of our business success. It is extremely important to us as well as the rest of the Maui community that HC&S continues to be a viable company.
It is extremely important to allow continued use of stream water for use in our homes, business and farms. If this is not allowed to continue the negative effect to HC&S, it’s employees and the rest of the Maui community would be devastating.
I urge you to do the right thing for Maui and support the staff recommendation.

Thank you for your consideration in this matter,

Hank Pacheco
Commission Members... thank you for accepting my testimony... the future of HS&S is very important...
December 16, 2009

Commission on Water Resource Management
Department of Land and Natural Resources
P.O. Box 621
Honolulu, HI 96809

RE: IIFS for 19 East Maui Streams

Dear Commission Members,

I am in strong support of the staff recommendations for the Interim Instream Flow Standards for the 19 streams in East Maui. As a HC & S family since 1954, I strongly support HC & S’s need for its fair share of water to be economically successful. Both my parents worked at HC & S and I worked 7 summers in the fields. Maui needs a strong agriculture community and HC & S is an important part of it. Water is the key to their future, and you hold their future in your hands.

Thank you for letting me submit my thoughts. HC & S means a lot to me and they need your support.

Sincerely,

[Signature]

Alice McBarnet
President
Maui Oil Company, Inc.
This is our written testimony in support for HC&S in reference to 11FS for 19 East Maui Streams.

Airgas/Gaspro
Diane C. Brittain
Maui Branch Manager

Diane Brittain <Diane.Brittain@Airgas.com> 12/16/2009 11:26 AM
To: "dlnr.cwrm@hawaii.gov" <dlnr.cwrm@hawaii.gov>
cc
bcc
Subject: FW:
Commission on Water Resource Management  
Department of Land and Natural Resources  
Bcc 621  
Honolulu, HI 96809

Re: 11FS for 19 East Maui Streams

December 16, 2009

Gentlemen:

This letter is to serve as our written support of H. C. & S. for the water situation at hand.

They have been and continue to be a very strong customer of Airgas/Gaspro. We have had a working relationship with them for over 50 years. We consider them to be a viable asset to our community and economy.

They are our single, largest industrial customer and the loss of their revenue will have a great impact on our business.

We definitely support the staff recommendations for the Interim Instream Flow Standards for the 19 streams for East Maui.

We trust that the final outcome will be favorable for all concerned.

Very truly yours,

AIRGAS/GASPRO

[Signature]

Diane C. Brittain  
Maui Branch Manager

---

Providing Solutions That Work
Regrettably, I am not able to attend the public hearings taking place at the Paia Community Center today. Please find my attached testimony.

Mahalo,

William "Billy" Perry
Hawthorne Pacific Corp.
Maui Parts & Service Operations Manager
Office: 808-871-9193
Fax: 808-871-6179
Cell: 808-870-8208

One Team-One Goal
Exceptional people committed to providing exceptional customer service
www.hawthornecat.com

Testimony on East Maui interim In stream Flow Standards.docx
My name is William Perry, and I am the Parts & Service Operations Manager at Hawthorne Pacific Corp. Hawthorne Pacific is the Caterpillar equipment dealer for the State of Hawaii. I am in strong support of the staff recommendations for the interim in-stream Flow Standards for the 19 streams in East Maui. Please support the staff recommendations for the interim in-stream Flow Standards for the 19 streams in East Maui.

HC&S is a major customer of Hawthorne Pacific Corp. They purchase Parts, Service and Machinery from us. The viability of Hawthorne Pacific Corp. will be challenged with any negative impacts to HC&S.

Several employees, including myself, have worked for HC&S in their repair shops starting off as apprentices in their Trades Progression Program. These employees have also risen to higher level positions within Hawthorne Pacific Corp.

Maui does not have a huge population base. A company with 800 employees is significant. A negative impact on HC&S will have far reaching consequences.

I ask that you consider the secondary impacts on Hawthorne Pacific Corp. when you decide on the East Maui Streams. I respectfully urge your support for the staff recommendations in your decision-making.

Thank you for this opportunity to testify.

William Perry
30.0 Unknown source, Action Alert

ACTION ALERT

Date: December 16, 2009 (Wednesday)
Time: 10:30 AM (testimony to start at 1 PM)
Place: Pau Community Center, Maui

Please ask the Water Commission to DEFER ACTION and send the recommendation back to the staff to conduct the analysis required by law.

Please focus on one or more of the following Talking Points in your testimony:

- The recommendation wrongly shifts the burden to the public. As a public trust resource, the off-stream diverters and the Water Commission bear the burden of protecting and promoting public trust purposes, such as keeping water in the streams for environmental protection and to satisfy Native Hawaiian rights. The recommendation must be returned to the staff to meet that burden.

- The staff’s recommendation fails to consider HC&S’s actual water needs. The Supreme Court in Waahole said that if the diverter fails to show how much water it needs, the Commission’s analysis must cease.

- The staff’s recommendation fails to consider and protect traditional and customary Native Hawaiian practices, including the right to gather native stream animals like ‘o’opu, ‘opae, and hiihiwi, and the right to use flowing stream waters for cultural and religious practices. Article 12, section 7 of Hawai’i’s Constitution and the State Water Code require that IIWSs include the flows necessary to support the exercise of traditional and customary Native Hawaiian practices. The Water Commission must respect and uphold the law.

- The staff’s recommendation allows HC&S and MDWS to continue wasting water through their leaking systems, while draining East Maui streams dry. The IIWS should incorporate the amount of water saved by stopping this waste.

- The recommendation concedes that HC&S has alternative water sources in the form of ground water wells, but fails to require HC&S to use them. The public trust mandates the Commission to “implement reasonable measures to mitigate the impact of offstream diversions, including the use of alternative sources of water.” Waahole 1, 94 Haw. at 143, 9 P.3d at 455.

- The staff’s recommendation fails to consider and protect traditional and customary Native Hawaiian rights to grow kalo simply because there is no existing farming. If there is no water, there can be no existing use. The “lack of active taro diversions” cited by the staff does not mean that kuleana rights to grow kalo (also known as appurtenant rights) will not be exercised in the future, especially if water is restored to the streams.

- The recommendation fails to balance competing uses by keeping the status quo in 18 of 19 streams. Even HC&S’ employees ask the Commission to “share the water.” To truly share the water, staff must restore more flow to the streams.

- The staff’s recommendation fails to assess the economic impacts of reduced diversions on HC&S by improperly relying on HC&S’s “all-or-nothing” threats that it must shut down if it loses even a drop of stream water. The law requires more; defer action now.
Name: Mathew Yamamoto
Home Address: 874 Bute Lane, Main Street, Wailea

December 16, 2009

Statement to the Hawaii State Water Commission:

I believe the Hawaii State Water Commission should support the continued diversion of stream water flow for agricultural use.

Taking away the water flow diversion will hurt the sugar company and probably eliminate people’s jobs. Without these jobs Maui will have more unemployment, people on welfare, homeless, and foreclosures. The children of the workers will be affected greatly.

Please think of the people to be affected by this decision. Please continue the diversion of stream water flow for agricultural use by agricultural companies and farmers.

Aloha,

[Signature]
32.0 Jimmy Haynes

Commission on Water Resource Management
Re: TIFS for 19 East Maui Streams

My name is Jimmy Haynes and I am here today to support HC&S on their right to continue to access water for the cultivation of sugar cane from the existing system which they developed.

I am a native Hawaiian and past President of Maui Native Hawaiian Chamber of Commerce and am very sensitive to Hawaiian cultural issues. I am satisfied that restoration of stream flow to the Kalo farmers of Keane and Wailua has afforded ample water for the continued viability of this important industry – Kalo farming has a much deeper cultural significance than the production of poi.

Sugar cane is a thirsty crop that requires huge volumes of water. HC&S will only survive with an adequate supply of water. The thought of cane land becoming fallow and converting to a brown desert is unacceptable. We need a prosperous agricultural sector to our Maui economy. Lord help us if we are a one-industry economy totally dependent on tourism.

Alexander & Baldwin, the parent company of Hawaiian Commercial & Sugar Company is a very responsible corporate citizen on Maui. Their generosity to the Maui community runs deep in serving non-profit charities. I personally, as Chairman of the Maui Arts & Cultural Center, can attest to A & B original gift to create the wonderful facility when the idea of a center was a vision of Pundy Yokouge. You don’t see Walmart or Costco giving back to Maui charities, they electronically transfer funds out of Maui daily and don’t respond to our charitable needs.

I ask for your support for HC&S to have adequate water supply from their system to sustain our sugar industry. HC&S has many challenges, internal and external, which includes water supply. Don’t cut this industry off at the knees. Keep our central valley green!

Respectfully submitted by
Jimmy Haynes
385 Hukilike Street
Kahului, HI 96732
808-270-2820
December 16, 2009
Commission on Water Resource Management
State Department of Land and Natural Resources
P. O. Box 621
Honolulu, Hawaii 96809
ATTENTION: Laura Thielen, Chair

Dear Chair Thielen and Members of the State Commission on Water Resource Management:

Roy's Restaurants prides ourselves in using the freshest of locally grown products in our Hawaiian Regional Cuisine. Hawaii grown fruits and vegetables are an integral part of our signature dishes, providing the flavors, textures, and colors that truly create a fine dining experience unlike any other.

Our restaurants heavily rely on the continued viability and sustainability of Hawaii's agricultural industry. Without the continued local production of fresh island produce, it would be extremely difficult for our restaurants to import products and ingredients from outside Hawaii that could match the freshness, quality, and taste of our locally grown products. A strong agricultural industry here in Hawaii is essential to our restaurants and to many other local island businesses.

We respectfully implore the Commission on Water Resource Management to ensure that sufficient water is made available to sustain off-stream uses for Maui's agricultural industry.

Your consideration and support is greatly appreciated.

Sincerely,

ROY YAMAGUCHI

Roy's Restaurant
6800 Kalakaua Ave
Honolulu, Hawaii 96825
Tel: (808) 396-ROYS (7697)
Fax: (808) 396-6705
A Saigon Café, Jennifer Nguyen

Testimony

Re: Staff Recommendations for Interim Instream Flow Standards for 19 Streams in East Maui

Chair Thielen and Members of The Commission.

My name is Jennifer Nguyen owner of Saigon Café a Vietnamese Restaurant in Wailuku. I am before you today in strong support of the interim instream flow standards staff recommendation for the 19 streams in East Maui.

I use many local products in my dishes. I also have a garden growing many of the herbs and vegetables used in my restaurant. Therefore, I personally know farming is hard work and without good reliability of water the crops will fail. Many of the leafy crops depend on consistent water and skipping irrigation rounds affects the quality of crop. I have watched these water proceedings with concern as it affects my livelihood along with my 11 employees. My signature dishes are due to the local ethnic flavors and using local vegetables.

I therefore, respectfully ask the Commission to take prompt action to approve the staff recommendation. Thank you for this opportunity to give my opinion.

Sincerely,

Jennifer Nguyen
35.0 Hawaiian Commercial & Sugar Co.,
Eli Natividad

My name is Eli Natividad. I work in the irrigation department at HC&S. I and my co-workers strongly support the Staff recommendation for the IFS of the 19 streams in East Maui.

As irrigators, we are responsible for the delivery of water from the ditches to the cane. It is our responsibility to make sure that water is used wisely. We clean ditches, maintain pipelines, make sure systems operate properly—sand filters, pressure regulators and pumps. We make sure the irrigation tubing delivers the correct amount of water...repair leaks, correct pinched or plugged tubing and pipelines. We apply fertilizer through the drip system. Each of us takes care of about 600 acres. We work on each others’ fields as necessary. It is hard work but this is what it takes to make sure we grow good cane. Some have said we waste water. I know what we do and it is our responsibility to make sure that does not happen. I wish some of these people would come and find out what we do instead of make these accusations.

I also want to say that management did not tell me to come here. I asked about what was happening in East Maui and learned about what is going on because it affects me and all of my coworkers. I felt it was important that one of us speak up at this hearing so you will hear from us. We need the water. We have seen the fields go dry during the drought because there is no water in the ditch. For some of our fields we have pump water but not all. And even as we use the pump water, we can see the salt in the fields ...it is not good for the cane. That is why we apply sand in the fields after harvest. If we do not have mountain water and only use pump water I do not think we can grow good cane. And, without mountain water we will not have good groundwater. To grow cane at HC&S we need water from East Maui. There are 140 people in our department and our jobs depend on this water. We all have families. I would like to see taro farmers have water. But to put water in streams where there is none now during a drought, and then, let our cane fields go dry does not seem to make sense. We will lose our jobs.

Please support the staff recommendation. I have signatures from my co-workers who are of the same opinion. Thank you.

[Signatures]

35.0-1 35.0-2
My name is Eili Kativid. I work in the irrigation department at HC&S. I and my co-workers strongly support the Staff recommendation for the IFS of the 19 streams in East Maui.

As irrigators, we are responsible for the delivery of water from the ditches to the cane. It is our responsibility to make sure that water is used wisely. We clean ditches, maintain pipelines, make sure systems operate properly—sand filters, pressure regulators and pumps. We make sure the irrigation tubing delivers the correct amount of water...repair leaks, correct pinched or plugged tubing and pipelines. We apply fertilizer through the drip system. Each of us takes care of about 600 acres. We work on each others’ fields as necessary. It is hard work but this is what it takes to make sure we grow good cane. Some have said we waste water. I know what we do and it is our responsibility to make sure that does not happen. I wish some of these people would come and find out what we do instead of make these accusations.

I also want to say that management did not tell me to come here. I asked about what was happening in East Maui and learned about what is going on because it affects me and all of my coworkers. I felt it was important that one of us speak up at this hearing so you will hear from us. We need the water. We have seen the fields go dry during the drought because there is no water in the ditch. For some of our fields we have pump water but not all. And even as we use the pump water, we can see the salt in the fields...it is not good for the cane. That is why we apply sand in the fields after harvest. If we do not have mountain water and only use pump water I do not think we can grow good cane. And, without mountain water we will not have good groundwater. To grow cane at HC&S we need water from East Maui. There are 140 people in our department and our jobs depend on this water. We all have families. I would like to see taro farmers have water. But to put water in streams where there is none now during a drought, and then, let our cane fields go dry does not seem to make sense. We will loose our jobs.

Please support the staff recommendation. I have signatures from my coworkers who are of the same opinion. Thank you.
Testimony

RE: THE IMPORTANCE OF AGRICULTURAL USES WHEN SETTING INTERIM INSTREAM FLOW STANDARDS FOR EAST MAUI STREAMS AND THE FOUR STREAMS OF NA WA‘I‘EKA

To the State Commission on Water Resource Management:

Aloha! I am before you today in strong support of the resolution recognizing the importance of agricultural uses of water in making instream flow decisions.

First, I would like to state that I know many employees of HC&S personally. I know that these people, my friends, will be devastated by the loss of the business that provides employment, income and benefits for multiple generations on Maui. They have told me this and I can see the fear in their eyes when they talk about it.

We must support local business and jobs whenever possible. HC&S and its parent company Alexander & Baldwin provides jobs with good pay and benefits for the people of Maui. If HC&S is denied share of the water and closes it will be a disaster for Maui. The closure of HC&S will trigger significantly greater unemployment, and subsequently related business closures and home foreclosures. There will be other social costs, like increased crime rates, domestic issues, depression, and more. I hope that this Commission will not allow this to happen.

The current global economy is in recession, and the Maui economy is no better. To allow HC&S to disappear in a time such as this is an unthinkable folly. The water is a resource to be used by the people and businesses of Maui which includes HC&S. We must find a way to share the water resources that are provided on Maui. I respectfully ask that you vote to continue diversion of stream flows for agricultural use.

Mahalo!

Sincerely,

Fred Brittan, II

December 16, 2009
37.0 Karl Kahui

Name: Karl Kahui
Home Address: 974 Akaiki Pl., Wailuku, HI 96793

December 16, 2009

Statement to the Hawaii State Commission on Water Resource Management

I ask the Hawaii State Water Commission to support the diversion of stream water flow for shared agricultural use.

HC&S has been allowed access to stream water for many years and for a long time HC&S has provided jobs for the people of Maui.

There is talk about supporting animals and wildlife that I agree with but we must also support people and the good jobs at HC&S.

Please continue the diversion of stream water flow for agricultural use.

Respectfully,

Karl Kahui
Statement to the Hawaii State Water Commission

I ask the Hawaii State Water Commission to support the continued diversion of stream water flow for agricultural use.

Sugar companies have been allowed access to stream water for many years and they have contributed a lot to the local people and economy. There has been discussion about restoring old streams and this is good but we must also support people and the good jobs at HC&S, too.

Please continue the diversion of stream water flow for agricultural use by agricultural companies and farmers.

Respectfully,

Naomi Okazaki

Name: Naomi Okazaki
Home Address: 13 Kau St, Kiho H7 96790

December 16, 2009
Radolfo Labuguen

December 16, 2009

Statement to the Hawaii State Commission on Water Resource Management

Please support the diversion of stream water flow for agricultural use.

Water is a resource that belongs to the State and is shared among everyone, which includes HC&S and its workers.

Water feeds the sugarcane, and the jobs provided feeds the workers families. Cutting off the water from HC&S is like cutting off the food and shelter to the families on Maui that have lived and worked for many generations.

Please continue the diversion of stream water flow for shared agricultural use.

Manalo for your kokua!
I am Sean O'Keefe, and I am Director of Environmental Affairs for Alexander & Baldwin, Inc. (A&B). In that capacity, I have been involved with water quality issues in Hawaii for over 15 years. Thank you for the opportunity to provide testimony on the petition to amend the interim in-stream flow standards for sixteen surface water hydrologic units in East Maui.

As the Commission is aware, water diverted from East Maui streams is essential to the viability of Hawaiian Commercial and Sugar Company and to agriculture in general on Maui. Any curtailment in the availability of adequate irrigation water would not only directly and adversely impact HC&S and its 800 employees and their families, but would also carry consequences for the entire Maui economy, from the many businesses which support and depend upon HC&S' operations, to the tourist industry which benefits from Maui's green central valley, to the electric utility which relies upon electrical power generated by HC&S' biomass-fueled boilers and hydroelectric plants.

A&B appreciates the difficulties facing the Commission in developing in-stream flow standards for these streams which strike the appropriate balance between in-stream values and uses of water for nonstream purposes, and we applaud the efforts of the Commission and Commission staff in this endeavor. We believe that the staff recommendations have achieved this balance, and we strongly recommend that the Commission adopt the staff recommendations.

Thank you for the opportunity to provide comments on this important issue.
Laura Thielen, Chairwoman; Director of the State Dept. of Land and Natural Resources
Testimony for CWRM 12-16-09
Paia Community Center

From: Victor C. Pellegrino, Taro Farmer; Professor Emeritus, UH-MCC; Board of Directors, Hui O Na Wai Eha

41.0-stream has a right to its own life by Victor C. Pellegrino

A stream has right to its own life. Man’s exploitation of nature—and in this case harnessing the stream water—is clearly wrong. So it is time for Maui’s water and mono-cropping companies to return diverted water to the streams so they can flow maaka to makai once again. They are crying to return to their natural state.

That said, let me tell you why I am so earnest about restoring Maui’s streams. Simply put, our streams have been dry for decades. Because the streams cannot speak for themselves, we must make sure we speak for them and bring them back to life. This is a just, humanitarian, and environmental end: by saving our water, we will save our ecosystem, our stream biota, our aquifers, and provide water for Maui now and for Maui’s future. And of course, we save ourselves!

I find Mauians are now awake about water rights. They now know that for 147 years their water has been diverted and used for profit. They know the kuleana users are at the end of small, dripping pipes and cracked lo'i. They know that their children and their children’s children have a right to have enough water for their needs. They know that lo‘i kalo have been starved for water long enough, and once returned, one of the most nutritious, allergy-free, sustainable food sources will greet us at the table in place of diabetes ridden sugar products. They now know that our Hawaii constitution states that water is a public trust. They know it is time to stand up and support the law for the benefit of all people—and not just companies that sell and exploit our natural water resource for profit.

I emphasize once more: Streams have a right to their own life. And if I were a stream, I would be damn mad! But then again, I would also be happy to know that someone out there is fighting to return water to my dry stream bed. That said, remember that when we give the streams back their life, we give life back to ourselves.

For the above statements and the following reasons, I request that the Water Commission to DEFER ACTION and send the recommendation back to the staff to conduct the analysis required by law.

The recommendation wrongly shifts the burden to the public. As a public trust resource, the off-stream diverters and the Water Commission bear the burden of protecting and promoting public trust purposes, such as keeping water in the streams for environmental protection and to satisfy Native Hawaiian rights. The recommendation must be returned to the staff to meet that burden.

The staff’s recommendation fails to consider HC&S’s actual water needs. The Supreme Court in Waiahole said that if the diverters fail to show how much water it needs, the Commission’s analysis must cease.

The staff’s recommendation fails to consider and protect traditional and customary Native Hawaiian practices, including the right to gather native stream animals like ‘o‘opu, ‘opae, and hiihiwai, and the right to use flowing stream waters for cultural and religious practices. Article 12, section 7 of Hawaii’s Constitution and the State Water Code require that IIFSs include the flows necessary to support the exercise of traditional and customary Native Hawaiian practices. The Water Commission must respect and uphold the law.

The staff’s recommendation allows HC&S and MDWS to continue wasting water through their leaking systems, while draining East Maui streams dry. The IIFS should incorporate the amount of water saved by stopping this waste.
The recommendation concedes that HC&S has alternative water sources in the form of ground water wells, but fails to require HC&S to use them. The public trust mandates the Commission to “implement reasonable measures to mitigate the impact of offstream diversions, including the use of alternative sources of water.” Waiahole I, 94 Haw. at 143, 9 P.3d at 455.

The staff’s recommendation fails to consider and protect traditional and customary Native Hawaiian rights to grow kalo simply because there is no existing farming. If there is no water, there can be no existing use. The “lack of active taro diversions” cited by the staff does not mean that kuleana rights to grow kalo (also known as appurtenant rights) will not be exercised in the future, especially if water is restored to the streams.

The recommendation fails to balance competing uses by keeping the status quo in 18 of 19 streams. Even HC&S’ employees ask the Commission to “share the water.” To truly share the water, staff must restore more flow to the streams.

The staff’s recommendation fails to assess the economic impacts of reduced diversions on HC&S by improperly relying on HC&S’s “all-or-nothing” threats that it must shut down if it loses even a drop of stream water. The law requires more; defer action now.
DATE: DECEMBER 16, 2009
TO: COMMISSION ON WATER RESOURCE MANAGEMENT
FROM: Joe Pueschel

SUBJECT: EAST MAUI INTERIM INSTREAM FLOW STANDARDS

My name is Joe Pueschel. And I am a Sales Representative at Hawthorne Pacific. Hawthorne Pacific is the Caterpillar Equipment Dealer for the State of Hawaii. I am in strong support of the staff recommendations for the Interim Instream Flow Standards for the 19 streams in East Maui.

Please support the staff recommendations for the Interim Instream Flow Standards for the 19 streams in East Maui.

HC&S is a major customer of Hawthorne Pacific. They purchase parts, service and Machines from us.

Several of our employees work for HC&S in their repair shops. Starting off as apprentices in their trades progression program. These employees have also risen to higher level positions within Hawthorne Pacific.

Maui does not have a huge population base. A company with 800 employees is significant. A negative impact on HC&S will have far reaching consequences.

I ask that you consider the secondary impacts on Hawthorne Pacific when you make decisions on the East Maui Streams. I respectfully urge your support for the staff recommendations in your decision-making.

Thank you for this opportunity to testify.

Joe Pueschel 12/16/09
December 16, 2009

State Commission on Water Resource Management
Post Office Box 621
Honolulu, Hawaii 96809

Dear Commissioners,

On behalf of the Maui Chamber of Commerce, an organization representing diverse businesses from every sector throughout the island, I am writing to support the staff recommendation before you on nineteen streams.

While few think about where their water actually comes from, the issue of Interim In-Stream Flow Standards became very important to our membership and the Maui community once they understood the issue and realized the negative impact taking water away from historical users could have.

Recently at Chamber Business After Hours, sixty-three of our members and their guests signed on to a petition to ensure that sufficient water is made available to sustain off-stream uses, including our County water systems, providing essential water for our homes, businesses and community facilities, and agriculture.

Our membership recognizes that water is essential to life and growth and that the use of this precious resource requires careful consideration. We believe that decisions related to water should be balanced and reflect the triple bottom line view of sustainability—economy, environment and social well being—and that they should incorporate a broad view, examining all possible water sources and resolutions (including new source development which we have long supported and continue to support), taking into account both current and future needs.

As the streams before you impact our entire community, in one way or another, and the economic impacts must be considered when taking water away from existing users. We are pleased with the review and staff recommendation to allow the use of stream water in eighteen streams and to replace some water in one stream to support taro farming. We, therefore, ask you, the commissioners, to pass the recommendation as written.

We are not alone in our support of this recommendation. Many community organizations, industry groups, and individuals concur with it as well and will be presenting testimony separately. Collectively, these groups and people showcase the broad community support for the recommendation presented and we hope you will take this input to heart.

We appreciate the opportunity to submit written testimony in support of the recommendation before you and look forward to a favorable decision.

Sincerely,

Pamela Tumpap
President

Maui Chamber of Commerce
177 Ako Street • Kahului, Maui, HI 96732 • Phone (808) 871-7711 • Fax (808) 871-0706
Chair Thielen and Members of the Commission:

My name is Warren Watanabe, Executive Director for the Maui County Farm Bureau. I come before you today on behalf of our 200 commercial farm and ranch families, companies and support organizations in strong support of the staff recommendations for IIFS for the remaining 19 streams in East Maui.

First, I would like to thank the staff for spending considerable time with us, visiting the farms trying to understand our off stream needs. Thank you.

Many farmers were trying to be here today. But many of them are small farmers without a lot of employees and for various reasons could not be here. I have written statements from eleven farmers.

Agriculture on Maui is struggling. We have had many companies close and are very concerned about the viability of the remaining operations. This is why the decision made during these hearings is so important. We have many challenges...adding another one...not enough water will surely close additional operations. The farmers and ranchers I speak of depend on agriculture for their living...they have nothing else. Maui has gone through a decade of droughts...Recently, Maui again qualified for Federal drought assistance...that is how bad it is. So when some ask what will you do if water were reduced 25%, 50%...the answer is we go out. I do not think that is what Maui wants. It is interesting how during a crisis, whether it be a strike or other catastrophe like 9-11, the local farmer becomes everyone's best friend...but we find they are foul weather friends...because as soon as things return to normal the loyalty to locally grown disappears. This must change. Farm Bureau was invited to a discussion about pandemic preparedness. We were asked if our local agriculture could provide in case of an emergency...how fast could we gear up. We said yes...as long as the mixture of large and small agriculture exists. We did it before...during WWII, plantations were able to help meet local needs. We can do it quickly if lands are in production...the infrastructure exists and is in good condition. But if there is no active farming, even if the land were there, the time it will take will be considerable. This is an important consideration when thinking about impacts if current diversions are reduced...farms will go out of business and the ability to address emergencies will diminish. Commercial agriculture is not just for the people of today but for the future.

Ph: 808 2819718
email:mauicountyfb@frontiernet.com
Commissioners, I respectfully ask that you support the staff’s recommendation that looks at the total impact...that of the first 8 streams combined with the 19 streams. This is important. Please support their recommendation in your deliberations. Thank you.
Chair Thielen and Members of The Commission.

My name is Noel Escobedo. I am before you today in strong support of the interim instream flow standards staff recommendation for the 19 streams in East Maui.

I grow cabbage and onions in Kula. During the summer it is very difficult to raise cabbage. But the marketplace demands cabbage. If our supply is not reliable, we can and have lost markets as wholesalers move to suppliers who are able to deliver on a consistent basis. During the summer, diamondback moth populations increase. The warm sunny days make their lifecycles very short and we can have new populations in 21 days. We sprinkle irrigate the cabbage. Some may say it is a waste of water but by applying water overhead, we can actually impact the moth populations. A study was done on watercress and timely application of water disrupts the mating of the diamondback moth and therefore controls the insect population without pesticides. Sc water is important to us not only to irrigate our crops but for other uses. Below is a picture of diamondback moth damaged cabbage.

I respectfully ask the Commission to take prompt action to approve staff recommendation. Thank you for this opportunity to give my opinion.
My name is Shirley Watanabe, owner of Watanabe Vegetable Processing LLC in Kula, Hawaii, that grows and prepares produce vegetables for restaurants, schools, and the military. We are a family farm and my son Thomas and daughter Heidi will be taking over the farm upon my retirement.

As I prepare our farm for the future, we are planning on improvements to ensure its long-term viability. We seek to expand our processing plant to meet new food safety requirements as well as provide a future for Tommy and Heidi. As we embark on these investments, new roads to developments are threatening to dissect our farm. At the same time, I hear about possibilities that there may be doubts about our water availability. Our water comes from East Maui. I want to know whether our current and future water needs will be accommodated.

The staff recommendation appears to support our continued use of water by agriculture. Please support this proposal in your final deliberations. Thank you.
Testimony
Re: Staff Recommendations for Interim Instream Flow Standards for 10 Streams in East Maui

Chair Thielen and Members of The Commission,

My name is Walter Evonuk. I am before you today in strong support of the interim instream flow standards staff recommendation for the 10 streams in East Maui.

I went to college and have come home to take over my father’s farming operation Evonuk Farms. I am a member of the Farm Bureau and part of the Next Generation Farmers. For me to stay in farming, I must be able to earn a reasonable salary to support my family. My father grew herbs. I grow lettuce and herbs and am always looking for new options to make my farm successful. I use drip irrigation wherever I can. But no matter how much I try, if there is not enough water, all of my efforts will be for naught. I urge the Commission to consider the importance of agriculture, just as the staff has done in preparing the recommendation. I know not everyone wants to farm. Provide people like myself with the resources and we can grow the food for others. This decision will be an important part on whether my fellow Next Generation Farmers and I will stay in agriculture.

Please support the staff recommendations in your decisionmaking. Thank you.
Chair Thielen and Members of The Commission.

My name is Bryan Otani. I am in strong support of the staff recommendation regarding the IIFS for the 19 East Maui Streams.

I am a fourth generation farmer. I chose to come back to Maui and continue our family farm. I am one of the Next Generation farmers but if I cannot earn a reasonable living I will be forced to give up farming. Our farm is located in Omaopio and the Kula Ag Park ...the best lands for growing vegetables on Maui. It's cool climate grows good cole crops and lettuce. Farming is hard work. I see vacant lands around me where farmers have given up due to marketing and other challenges....but we are still here. If additional problems such as not enough water enters into the picture, I too may be forced to quit. This goes against the Maui General Plan and other policies in the State that support locally grown.

I therefore, support the staff recommencement of status quo for all but 1 stream and ask the Commission to take prompt action to approve the staff recommendation. Thank you for this opportunity to give my opinion.
Re: Staff Recommendations for Interim Instream Flow Standards for 19 Streams in East Maui

Chair Thielen and Members of The Commission,

My name is Carver Wilson. I am before you today in strong support of the interim instream flow standards staff recommendation for the 19 streams in East Maui.

I grow protea in Upcountry Maui. Protea compared to most vegetable crops does not require as much water. However, it does need some. In prior drought years, we have actually lost plants due to lack of water. As I heard about the possibility that current water sources may be reduced due to stream restoration, I was greatly concerned. It takes several years for protea plants to grow to full flower production. Loosing plants due to a drought means several years of income lost. The staff recommendation recognizing the value of agriculture as an offstream use is significant.

I respectfully ask the Commission to take prompt action to approve staff recommendation. Thank you for this opportunity to express my opinion.
50.0 Fujimoto Farm, Robert Fujimoto

Testimony

Re: Staff Recommendations for Instream Flow Standards for 19 Streams in East Maui

Chair Thielen and Members of the Commission,

My name is Robert Fujimoto and I grow Maui Kula Onions using East Maui water. I am in strong support of the staff recommendation regarding the IIFS for the 19 East Maui Streams.

Maui Kula Onions must be grown in Upcountry Maui. The climate and soils are the basis for the sweet flavor... Grow it in Puunene or Lahaina and it will be different. Reducing our supply of water will reduce our ability to grow these onions. I know Maui is trying to retain and hopefully expand its' agriculture. An IIFS that increases the risk of not having inadequate water will not attract farmers. We are already short of water during the summer. Additional reductions will not work. Increase the source of water before putting water back into the streams.

I support the staff recommendation of status quo for all but 1 stream and ask the Commission to take prompt action to approve the staff recommendation. Thank you for this opportunity to give my opinion.

Sincerely,

Robert Fujimoto
Testimony

Re: Staff Recommendations for Interim Instream Flow Standards for 19 Streams in East Maui

Chair Thielen and Members of the Commission,

My name is Robin Shimabuku, I’m a county extension agent on Maui. I’m responsible for the edible crop program which includes the vegetables, taro herb and fruit industries. I am writing this letter in strong support of the interim instream flow standards staff recommendation for the 19 streams in East Maui.

I’ve been working with the diversified agriculture industries on Maui for 18 years. The markets in Hawaii demand a wide diversity of crops. I’d like to comment on the water usage of the Maui farmers as compared to Larry Jefts on Oahu. I’ve been made aware of the question why Maui farmer’s annual water usage per acre is so much higher than Larry Jefts on Oahu. The increase in water usage is primarily due to intensive farming practices of our farmers, growing multiple crops year round on every acre of farmable land to maximize their production acreage. Larry Jefts’s on the other hand, has several thousand acres of land to farm and does not intensively farm his land. He tends to plant one or two crops per year on the same acreage of land. This method allows him to avoid insect and disease problems associated with intensive farming practices. He practices similar management strategies utilized by mainland vegetable grower which include 3 to 4 year crop rotations with a nonhost plant. Another, reason why the Maui growers may have increase water usage is due to the crop being grown. Lettuce production requires sprinkler irrigation to cool off the plant during the heat of the day to reduce moisture stress, especially during the summer months. In general, sprinkler irrigation requires more water usage than drip irrigation due to the non-uniformity of the irrigation system. On Maui, non-lettuce growers primarily use drip irrigation to conserve water usage thereby reducing their water cost. In my opinion, these are the primary reasons why Maui grower’s water usage appears high.

Thank you to the Commission Staff for you time and effort in addressing this issue. I respectfully ask the Commission to take prompt action to approve staff recommendation.

Aloha,
Robin Shimabuku
County Extension Agent
Agricultural Programs
Hawaii Crop Improvement Association, Alicia Maluafiti

Hawaii Crop Improvement Association
Growing the Future of Worldwide Agriculture in Hawaii

Testimony to the Commission on Water Resource Management
December 16, 2009, 10 a.m., Paia, Maui
Regarding the Petition to Amend the Interim Instream Flow Standards

Aloha Commissioners,

The Hawaii Crop Improvement Association (HCIA) is a nonprofit trade association representing the agricultural seed industry in Hawaii. Now the state’s largest agricultural commodity, the seed industry contributes to the economic diversity of the islands by providing living wage jobs in rural communities, keeping important agricultural lands in agricultural use, and serving as responsible stewards of Hawaii’s natural resources.

Hawaii’s growing population has resulted in greater competition for water resources between municipal, military, agricultural, private, environmental, and traditional water demands. But water remains critical to the overall viability of Hawaii’s agricultural industry, especially as farmers struggle to stay in business.

HCIA is concerned that precedent-setting rulings on the island of Maui by the state water commission may have an adverse affect on future water allocation. Water for agricultural use needs to be considered a state priority to ensure the long term viability of agriculture in Hawaii. Without water, there is no agriculture. And without agriculture, there is no food.

The duty of the Commission to protect and promote the entire range of public trust purposes dependent upon instream flows is an important and enormous responsibility. HCIA believes that the water commission staff has developed a recommendation that seeks to balance the needs of all instream and noninstream uses based upon the best available information. We ask for your thoughtful consideration to their proposal which will ensure the viability of agriculture in Hawaii.

Mahalo for the opportunity to provide testimony on this important issue.

Aloha,

Alicia Maluafiti
Executive Director
53.0 Sylvestre Tumbaga

Testimony

Re: Staff Recommendations for Interim Instream Flow Standards for 19 Streams in East Maui

Chair Thielen and Members of The Commission.

My name is Sylvestre Tumbaga. I am before you today in strong support of the interim instream flow standards staff recommendation for the 19 streams in East Maui.

I grow tomatoes, sweet corn, onions, ginger, taro and other crops in the Kula Ag Park. I use non-potable water that comes from HC&S through the County DWS system. I have been farming for 23 years. It is getting harder and harder to earn a profit. Cost of production is going up but the price we get for the crops doesn’t change as much. Now I hear that the amount of water we get may be reduced. I have 14 workers on my farm. I don’t know that I can keep them employed because without water I will not be able to farm. I don’t know of other crops that I could grow that would use less water so the only choice is not to farm.

Please keep the water coming to our farms.

Thank you for this opportunity to give my opinion.
54.0 Jamie Shishido Farm, Jamie Shishido

My name is Jamie Shishido. I am a third generation farmer utilizing water on the Lower Kula System in Upcountry Maui. I am very concerned about the Interim Instream Flow Standard. I strongly urge that commercial agricultural uses of water are considered as decisions on Interim Instream Flows of the 16 East Maui Streams are made. Maui's efforts to increase self sufficiency may be impacted.

I am a vegetable farmer, providing vegetables for Maui consumers. Weekly, I market approximately 800 pounds of green onion, 1800 pounds Chinese cabbage, 600 pounds kai choy from 22 acres in Omaopio. My parents and 3 full time and 1 part time workers are dependent upon the farm for income. I am very concerned about my future as well as what will happen to my farm when I retire.

Once lands exit active agriculture production, it will not return ... former Pioneer Mill fields in Lahaina, Maui Pineapple fields in Pulehu and other fallow fields around my land are cause for concern. I am faced with many challenges – transportation, market prices and various new pests to name a few. Living and depending on a chronically water short water system exacerbates an already risky business. I sometimes cancel plantings during the summer since I know there many not be enough water to see the crop through harvest. When water is short pest problems increase. I know various types of cabbage and diamondback moth damage can be severe to the extent that very little of the crop can be marketed. Irrigation not only provides water to the plants but also plays a role in disease and pest management. Adequate water helps by having vigorous plants which can out-compete disease and pests, thereby minimizing my need to use pesticides. Some may be critical of our use of sprinklers instead of drift. Sprinkler application of water helps with diamondback moth control. This is an important use of water. Please recognize this use of water in your deliberations.

Up to 5 years ago, I shipped to Oahu on a regular basis. As costs rose, and market prices remained stagnant, I was forced to stop exporting and focus only on local markets to maintain a profit margin. I am not the only farmer faced with this situation. Many other farmers are in a similar situation, while others have already gone out of business. I would like to see my lands remain in agriculture but that can only happen if my farm remains viable. I am constantly looking for new crops and markets. I am constantly changing to stay in business. But without water, I will not be able to continue farming.

If more water is required to be left in streams, I know of no other alternatives currently available for us during watershort periods. If I cannot farm on a continuous basis, I will not be able to stay in business. My customers will be forced to buy imported vegetables instead of locally grown. I do not think this is good for Maui on the long term. Please consider agriculture's needs as you make your decisions. I respectfully ask for your support of the staff recommendation during your decision making process. Thank you.

Jamie Shishido
Hasimoto Farms, Howard Hashimoto

Chair Thielen and Members of The Commission,

My name is Howard Hashimoto, a fourth generation farmer. My family has been farming for nearly a hundred years in Kula, Maui. My dad, John Hashimoto, as part of the Olinda-Kula Soil Conservation District lobbied for many years to improve the water system in the Kula area. Although conditions have improved, it was through my dad and farmers like him, that improved the water system that is now being threatened to be taken away from us. A hundred years of farming is not enough of a justification for water to keep flowing so I can continue to farm and to pass it along to my children?

I am before you today in strong support of the interim instream flow standards staff recommendation for the 19 streams in East Maui.

I grow cabbage and onions in Kula. Farming has many challenges. One issue you may not hear about is how wildlife damages our crops. When droughts occur, wildlife need water. Recently, bird populations have increased and as weather is dry, our crops become prime targets for wildlife. Deer, pheasants and pigs regularly do damage on our farms. Below is an example of pheasant damage. Cabbage needs sufficient water for the heads to form properly. Reduced water coupled with problems such as diamondback moths and wildlife will make it very difficult to have a profitable crop. Reductions in current diversions will be a major problem, especially during droughts.

I respectfully ask the Commission to take prompt action to approve staff recommendation. Thank you for this opportunity to give my opinion.

Sincerely,
Howard Hashimoto
Hashimoto Farms
Testimony

Re: Staff Recommendations for Interim Instream Flow Standards for 19 Streams in East Maui

Chair Thielen and Members of The Commission,

My name is Ricky Kametani. I am before you today in strong support of the interim instream flow standards staff recommendation for the 19 streams in East Maui.

I farm in the Kula Ag Park. As such, I get my water from East Maui, from the County of Maui delivered through HC&S ditches and pumped up to the Park. Recently, HC&S had to close its' ditches for maintenance. But, it was only for 1 week. At the same time, the discussions about the IIFS occurred. We could adjust our plantings and accommodate the 1 week. It concerned me greatly if the IIFS forces the 1 week to be extended periods of time. In that case, I probably will not be able to farm full time. My employees will probably need to find other jobs. It seems to be opposite of the State's promotion to increase locally grown. I am glad the staff recommendation suggests status quo. We need to develop more water sources before putting water back in the streams.

I respectfully ask the Commission to take prompt action to approve staff recommendation.
Thank you for this opportunity to give my opinion.

Ricky Kametani
Chair Thielen and Members of The Commission.

My name is Neil Nakamura. I am before you today in strong support of the interim instream flow standards staff recommendation for the 19 streams in East Maui.

I farm on Holopuni Road in Kula. I am a third generation vegetable farmer. I also serve on the Kula Soil and Water Conservation District. I grow chinese cabbage, specialty crops such as baby lettuce. My farm has downsized over time due to various challenges. It worries me that now water may be my limiting factor. As a Director on the SWCD, we have worked on many projects to bring water into Kula. Yet the needs keeps growing and under drought conditions, it is still not enough. Now is the time to put water back into the streams. The economy is suffering and while new source development projects are in the works, they are no where near completion. Please continue to allow existing diversions as suggested in the Staff Recommendation.

I respectfully ask the Commission to take prompt action to approve staff recommendation. Thank you for this opportunity to give my opinion.

Neil Nakamura
December 16, 2009

Testimony before the
State Commission on Water Resource Management

Re: C. I – Interim Instream Flow Standards – Maui

Chair Thilen and commission members:

My name is Dan Clegg. I am the Land and Resource Manager for Monsanto Hawaii. My primary responsibilities are to oversee our company land assets that include water resource management. I am also a Maui resident and have a deep appreciation the Commission has in balancing the cultural, social, and economic needs we have on our island and throughout the State.

Monsanto Hawaii is located on the islands of Kauai, Oahu, Molokai and Maui. We currently farm over 5000 acres in both lease as well as fee simple. On Maui alone, we farm about 1290 acres. We also employ over 1,000 employees statewide of which Maui employs about 400 employees.

Water is critical to the economic viability of agriculture in Hawaii. The engineering and construction of the irrigation systems developed by the sugar plantations are well designed as it was based on gravity flow that moved thousands of gallons of water over miles of prime agricultural lands. We need to continue this valuable water infrastructure system and service it provides to farmers on the drier parts of the State.

Maui’s agricultural industry is still one of the most productive farming communities in Hawaii. We need to maintain and enhance agricultural water availability so that Maui’s agricultural industry can be viable now and in the future. However, without adequate and affordable water, these prime agricultural lands will become dry and useless for farming. In addition to losing a major agricultural business and it’s employees, there will be a trickle down effect as many other businesses and suppliers will also feel the negative ramifications.

The seed industry in Hawaii, including Monsanto, relies on the availability of affordable agricultural water. Like any other farmer, we also recognize the importance of managing our water resource efficiencies while maximizing crop productivity. Farmers are very aware of water resource management as it is a constant and vital part of their business and production planning.
We respectfully urge the members of the Commission on Water Resource Management to support the continued off stream uses for agricultural purposes. We appreciate the decision that is before all of you as it will set a precedent for the entire State of Hawaii.

Thank you for your consideration of our comments.
59.0 Pukalani Plant Co.,
James A. Jones

My name is James A. Jones and I'm the owner of Pukalani Plant Co. I am in support of the staff recommendation regarding the IFS for the 39 East Maui Streams.

Pukalani Plant Co. was started in 1992 as a wholesale plant nursery serving the retail, landscape and hotel markets. Our operations began in the town of Pukalani and have now expanded to Manana Kula Agriculture Park. Pukalani Plant Co. currently employs 11 full-time staff. The staff at Pukalani Plant Co. receive an above average agriculture wage, vacation, sick leave, holiday, medical insurance, matching 401K retirement plan, bi-annual bonuses, and are covered by all the required employment insurances. Of note, in this economic slowdown Pukalani Plant Co. has not had to layoff anyone or cut any of our staff's hours.

I am in support of agriculture. It is an industry that is essential to Maui. It is an industry that needs to be protected and preserved. Water is the lifeblood of our industry. Without it there will be an industry in ruins. I believe the Upcountry region is a unique situation in that the primary water source is from surface systems. We already experience on a yearly basis voluntary and mandatory water restrictions without stream flow intervention. It concerns me greatly that the water system that feeds our region will be adversely affected due a stream's first decision. I contend that we have gone too far down the road to allow a decision like this to take place. It should be people and communities first. I believe with better technology and improved systems a balance can be achieved, but sustaining those who have become dependent on this resource should take precedent over the desire to allow streams to flow. Please vote in support of the Staff Recommendation.
December 16, 2009

TO: Chair Thielen and Members of the Commission
FROM: Maui Farmers Cooperative Exchange
       Gilbert Silva – General Sales Manager
SUBJECT: Support Staff Recommendation

On behalf of the Maui Farmers Cooperative Exchange and our 16 farmers, we strongly support the staff recommendations of status quo with the exception of the Makapipi stream.

Sufficient water supply is a vital ingredient to our farmers. Our farmers grow green cabbage, cucumber, tomato, zucchini, varies type of lettuce, corn, Chinese cabbage, and many, many more produce, and especially our Maui Kula Sweet Onions.

Our farmers are continuing to support the message of “buy fresh, buy local”. We support all of the Islands with our local produce and we need sufficient water for our farmers to stay in business and farm.

Your sincere consideration in view of our request will be appreciated.
December 16, 2009

FORMAL TESTIMONY FOR THE RECORD by Jim Anthony, Ph.D. in the matter of Petitions to Amend the Interim Instream Flow Standards for the Surface Water Hydrologic Units of Waikamoi (6047), Pukuhonua (6048), Naupuuua (6049), Pualiiu (6050), Homolua (6051), Wainalama (6052), Okoa (6053), West Kula (6054), Kopekole (6055), Waiakaa (6056), Pukaau (6057), Waiakaa (6058), Kepiloa (6059), Kapaalua (6060), Hamel (6061), Waiaoa (6062), Kapalua (6063), Hamau (6064) and Makapipi (6065), Maui.

Commission on Water Resource Management public hearing at Pului, Maui on Wednesday, December 16, 2009 commencing at 10 a.m.

The document before the Commission and the public is the Commission’s 56-page Staff Submittal dated December 16, 2009. This document was prepared by the Commission’s staff and signed off on by Ken Kawahara, PE, the Commission’s Deputy Director and was approved for submittal by Laura Thielten, Chairperson of this Commission and Chief also of the Department of Land and Natural Resources within the administrative confines of which the Commission is ensconced.

The submittal comprises staff findings set out in considerable detail and recommendations for the Commission to consider in the light of public testimony and the very limited contributions reflecting staff thinking. The Submittal is merely a submittal—a document presented in public, as required by law, for discussion and is subject to such changes as Commissioners in their deliberate judgment may wish to make. I shall argue that changes should be made to the Staff Submittal.

BACKGROUND:

The background to matters at hand is set out in the Staff Submittal (pp. 2-8). The raw numbers are very substantial: HC&S has taken between a low 20 and a high of 400+ mgd over the last hundred years. The long term average is 165 mgd; the average over the last six years has been 130 mgd. The DWS takes 1.5 mgd for its upper system and 2.2 mgd for its lower system and, in
addition takes up to 2.2 mgd off of the HC&S system periodically. The bulk of the water taken is for agriculture; a much smaller amount that is diverted is used as potable water. The revenue stream to the State for this enormous taking of water is insignificant by any measure.

The Staff Submittal does not make the point that these enormous quantities of water have been taken over many years without recompense to the people or what was once a Kingdom, then a Territory and now a State of the Union. The plain fact of the matter is that the taking of water under these circumstances has been an unbridled rape of the commons. The failure to acknowledge this is a singular failure to acknowledge an important fact of history.

Of particular note is the fact that it has taken more than eight years for the original petition to get to where we are now. So this, today, is finally our day “in court.” This is the time and this is the place where we, the people, petitioners and members of the public, have their chance to analyze and critique the document prepared by staff which is before us. The Staff Submittal attempts to say it but in fact says very little. I ask for your patience as I examine it and tell you where it has failed, where it is flawed and what can be done to change it. The Hawaii State Supreme Court’s mandate to the Commission is to be proactive: nowhere in the Waiahole Decision is the Commission called upon to be “adaptive”.

The Staff Submittal as it stands is a major failure of the Thielen/Kawahara team. Simply put theirs is a failure to provide administrative leadership in as much as they both ignore the mandate of the highest court in this State as clearly and unambiguously set out in the Waiahole decision.

On the last page (8) of the Background portion of the Submittal there is mention of “best available information” but we are not told what that information is. We are left to guess. Then in the same paragraph the term “adaptive management” is used. This is merely a flimsy and embarrassing smokescreen for doing nothing as will be clear once we get through the tangled underbrush of maps and diagrams and annotations.

[Comments on sections on pp. 8-13 by reference—with bullet point annotations]

WHAT THE STAFF SUBMITTAL RECOMMENDS

Despite close to 60 pages of text, diagrams, regurgitation of what people had to say (no matter how pathetic or nonsensical) the Staff Submittal’s main recommendation is to do nothing after 8 years of working on this. The bottom line: leave all instream flow levels at what they were on October 8, 2008—twenty one years ago.

And then, like spent pensies waving in the wind, there are three sections on pp. 55-56—as embarrassing as my metaphor—called “implementation”, “monitoring” and “evaluation”; the

Commission will, subject to available funding, do or pretend to do or inquire into, or talk to people about. This, I will now argue, is a hollow commitment, made without honor or good faith.

WHERE THE STAFF SUBMITTAL IS FATAL FLAWED: MY CRITIQUE

The brutal fact of the matter is that there is no ‘available funding’. It is significant that this disclosure is not made in the Staff Submittal. Mr. Kawahara, who signed off on the submittal, and his staff participated in its writing, knows that there is no funding and none likely to be available soon. Laura Thielen knows that too. At this very moment the Commission does not even know how much money will be available to it come January 1—just for the next quarter. Neither Ms. Thielen nor Mr. Kawahara know what the Commission’s budget is going to be for the next year—that they get is now doled out in quarterly segments. The Commission has already lost 4 staff positions. There is barely enough money to buy toilet paper. So in the present financial climate implementation, monitoring and evaluation are just flag waving—synonyms for doing nothing since there is no money to do any of this.

Staff had a way out if they had not muzzled themselves or been muzzled by their supervisors. Laura Thielen and Ken Kawahara. Staff might have said in their submittal: “We have wrangled over this problem for a very long time. Millions of gallons of water, the most precious of our precious public trust resources, are being taken, and have been taken, over the last hundred years and more. Work has to be done on implementation, monitoring and evaluation. We, the government, have no money to do this and we are not likely to have money in the near future to do the important work that needs to be done. The people who have taken the resource and who want to continue to take it (HC&S and DWS) must now pay something for the resource so as to finance urgent work that needs to be done. We are in a new era—an era where there are no more freebies for corporations and others who take, use water and make profits—or lose money. But we, the Commission, cannot levy a fee unless we attach it to a water use permit. The only way that we can do this is to designate the entire area where the 16 streams/hydrologic units are located and then attach a fee to the water use permits which the Commission has the legal power to do under the Water Code. We therefore recommend Designation—the Staff Submittal would say. That would be brave, imaginative, smart and creative. It would underscore that vital American idea: there is no such thing as a ‘free lunch’—for anybody, any more. The days of corporate welfare are over.

Although the Staff Submittal hides behind its not so clever smokescreen it has at the back of its head the idea that HC&S is a deeply troubled corporation at the end of its tether—$13 million dollars in the red last year and a further $12 million in the red for this year—despite the fact that
it is still diverting as much water as it has done for a very long time. The Commission staff has brought into the canny idea that if HC&S goes under taking the drags of sugar with it, it will continue to want to take the water it was been taken to sell and to grow house—more profitable than growing sugar cane. That would mean uprooting agricultural land and all of the nasty fights that that will generate. HC&S is not likely, so the implicit argument goes, to fold its tents like Arabs and silently steal away into the night. So be it. Let HC&S, after its sugar operations collapse, do what it might. The people of Maui can fight that battle, cross that bridge when they come to it. Right now there is only one issue before all of us: put more water back into those 16 streams and find both the money and a way to do it. The money that is needed to pay for the research that needs to be done must now come, finally, from those who take water. No more externalization of the real costs of water.

Look, Commissioners, it’s a tough world out there. HC&S’s dilemmas are those built into the market: you play, you win. Things change, the world changes, you keep playing, you lose, you collapse, you go under. That’s the market. It happens to Lyman Brothers and big banks and corporations much bigger than HC&S. The adjustments, like all adjustments, will be painful. But Maui will survive. Those parts of the land which have been brutalized will be restored. Maui and the people of Maui can live and find a way to live without sugar as the rest of Hawai‘i has. But Maui and the people of Maui cannot live without water. The time has come—and this case exemplifies that that time has come—no more corporate welfare, no more free water. I invite the Commission to do its job and not capitulate to implied corporate threats made on its behalf by a supine bureaucracy. This is the only way for the Commission to do what the Hawaii State Supreme Court mandated it to do: The Commission must not act merely as an umpire calling balls and strikes. It must act proactively to protect the resource for this and future generations. This mandate extends to stream protection. The time has come for the Commission to face up to its responsibilities. The time has come, in this case, to invite designation and act on it.

Specifically, I urge the Commission to delete the words “subject to available funding” wherever it occurs in the Submittal and add the following language at the end of the last paragraph on p. 56:

Staff recommends that the Commission invite the Petitioners to request that the 16 streams within the hydrologic units described herein be designated both as surface and ground water management areas and that any water use permits issued be made subject to such fair and reasonable conditions as are warranted by present circumstances and as are also mandated by the tenor and substance of the Hawaii State Supreme Court’s decision in the Waiahole case rendered in August 2000.

Or, if the Commission is averse to this, it may order Designation on its own motion to do so.
Chairperson Thielen and members of the Commission:

Thank you for this opportunity to comment on the petitions to establish measurable instream flow standards for streams within the 16 hydrologic units. The Department of Agriculture supports approval of the petitions, based on CWIRM staff’s recommendation, that maintain the quantity of diverted surface water for agricultural irrigation. The staff’s recommendation appropriately and reasonably reflects the substantial quantification of need demonstrated by agricultural operations in central and upcountry Maui that would be otherwise be adversely compromised if the quantity of diverted surface water is reduced.

Commission approval of the petitions would be in consonance with Article XI, Section 3 of the Hawaii Constitution that declares: “The State shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self sufficiency and assure the availability of agriculturally suitable lands.” Notably, irrigation water will continue to be available to the 27,102 acres of Alexander and Baldwin (A&B) agricultural land designated by the Land Use Commission as Important Agricultural Land (IAL) on June 29, 2009. A&B voluntarily sought and received IAL designation for much of the Hawaiian Commercial and Sugar Company plantation which depends on the irrigation water supplied from these 16 hydrologic units. It took almost 30 years since the constitutional amendment for Important Agricultural Lands (IAL) for the laws to be passed and the first lands to be so designated.
Furthermore, Commission approval of the petitions would assure near-term certainty of irrigation water availability in central and upcountry agricultural areas, thereby supporting initiatives and investment to increase food and bioenergy production on Maui.

We strongly believe that the ability to produce food is an undeniable public interest, and that the ability to produce alternative energy sources through energy crops to alleviate dependence on imported fossil fuels is also in the public interest. Agriculture serves the needs of the community for food and employment, and provides good stewardship of the land which is essential to Maui and the State.

We believe the petitions reflecting the staff’s recommendations represent the best available information from which a balanced decision for all uses of the water can be made. The future of the vital and irreplaceable agricultural resources that are abundant in upcountry and central Maui depends solely on your decision.

Thank you for this opportunity to provide our comments.
Aloha Water Commission Members and Chair Thellen.

Thank you for this opportunity to testify before you today in regards to the East Maui streams and to comment on your staff’s report.

My name is Sean Lester. I am a large power systems engineer and a 21-year resident of Maui, particularly in Makawao, Kula, Haiku and Huelo.

To begin -

Your staff report states that HC&S generates two renewable energy alternatives: hydroelectric and biomass fueled electric power. Part of this energy is sold to MECO, who has requested the help of HC&S to generate backup electricity during power outages.

First of all, the power from the hydroelectric energy is supplied for internal use by the HC&S plantation. Secondly, I want to place one thing in perspective: HC&S powers its Pu‘unene plant year round with Australian anthracite coal – and does so to the tune of approximately 100,000 tons of coal a year. The power purchase contract with MECO is based on the ability of HC&S to deliver a stable and dependable power source for the grid. Coal is the factor that allows HC&S to maintain a base load power contract with MECO, not the erratic delivery of biomass from cane. If the HC&S plantation closes, you can be assured a way for this plant’s electric generation to be maintained for output to the grid would be worked out, and our local coal plant will still be in use.

Enough about power. On to the cost of diverting most of the water from these East Maui streams.

Oppression is a very intense word. For 150 years, the water that used to flow in Maui streams has been diverted with great efficiency to feed HC&S and their lands; the diversion of that same water has also been employed as an instrument of oppression upon the people living along those streams.

The first day the diversion started their lives were inalterably changed, and so many families had to give up their land and roots because without water, there is no life. They have, in essence, paid directly for every drop of water HC&S has used – paid dearly, for the HC&S profits over a very long period of time.

Now, with great effort, citizens who live are along these streams are asking for Justice, and less oppression. What this staff report says is – “you haven’t paid enough yet”. It is saying that oppression is OK. It says that justice is only for HC&S as the major user of this water, just as it has been in the past.

Streams are a continuously changing phenomenon. In some ways they act like living entities, with the amount of flow each year, the use and quality of maintenance, whether natural or man made, actually determining the quality of each stream for the future.

Your staff report makes the following statements:

In developing the interim IFS recommendations, staff has attempted to remain consistent in weighing all of the instream and non-instream uses of each stream based upon the best available information presented in the IFSARs, along with the oral and written comments received through the public review process. Needless to say, this process has proved
challenging due to the unique nature of each stream, whether in attempting to compare stream characteristics across multiple hydrologic units or within a single one.

The fundamental first step in developing an IFS is assessing hydrology.

The next step is to weigh often-competing instream and non-instream uses of water against the amount of water available to accommodate the needs of these uses.

With a few exceptions, the diversions capture almost all base flow and an unknown amount of total stream flow in each stream, decreasing flow downstream of the diversion and sometimes causing streams to go dry.

The major flaw in the logic of these staff stream studies is a simple fact of time. When these diversions were completed 150 years ago, a degradation of the streams as living biodiverse systems occurred. Without flow, more and more cracking of stream beds, erosion of plant systems until the systems were no longer viable, and the moving or degradation of family units, who’s traditional and sophisticated knowledge tended the streams, were drastically altered.

So the question becomes, where does the responsibility to restore stream flow begin? Is it as this report states, a simple act of looking at stream flow potential over a short period of time, or is it a deeper responsibility – to insure a restoration of the stream flow to allow habitat to return to somewhere near the level before these devastatingly effective diversions occurred in the first place?

The real question, which seems to fuel this report is – are these streams beyond triage, when the HC&S management has laid out a very good and basically simple story of the immediate need for triage for their company? Are you accepting the most simple recommendation because it is the path of least resistance – because it is immediate and a functioning system, albeit an artificial one who’s questionable maintenance and management policies have led to the need for you to make this decision?

Do you keep the injustice – the legacy of a taking of this water so complete that it shows in each and every cracked and dried stream and in the people whose very lives were so altered by the taking of this water – do you keep this injustice alive by allowing HC&S the cheap water they desire, or do you look deeper? Your legacy reflected in the decision you make today will speak volumes.

This isn’t about jobs; that’s a red herring. It’s about corporate extravagance – an extravagance that has allowed the ditch system which they built and have been charged to maintain to degrade until 50% of the captured water is wasted. That is enough to return the stream flow on the table before the Water Commission and give HC&S all the water they want. This corporation has been a poor steward.

Whether HC&S folds or not is not because of this commission’s decision today. That will be a corporate decision with far more than this water decision as the precipitator of any action. Any decision you make in HC&S’s favor is temporary, and plays into the hands of a large corporation whose ownership is mainly by non-Hawaiian entities who care little for what happens to workers and whose main driving force is, by definition, maximum profit.

The banking of the water that is in question here before you is far more important to the corporation than the viability of a failing sugar plantation. It has been a standard practice that the water from such plantations becomes a legacy with ownership rights which can be utilized by the company for uses other than agriculture. And your decision today needs to insure this not happen with this water.

The state constitution is very specific in its charge to follow specified uses for water. The uses HC&S prescribe are down the list and below the native Hawaiian and other uses which have been claimed by those before this Commission. You are charged with the decision as to who comes first, although the constitution specifically lays this out.

So you have to ask yourselves, at what point, if this commission does not follow the letter and spirit of the State Constitution in regards to water rights, does it become the duty of the people to remove these diversions from the streams in question? It seems to me the answer is the moment you decide not to return the stream flow to a viable amount for native Hawaiian use.

There is great wisdom in our Hawaiian Constitution. It foresees a need for a deeper questioning of our actions – beyond support for temporary use by corporations or counties or other temporary uses – to a place that will support and perpetuate the very nature and soul of our islands. It asks us to go to a place far beyond this staff report’s narrow definitions and simplified opinion.

When do people have the right to insure the basic tenets which give them specific rights are not overwritten by your staff’s statistics and simply defined parameters? It seems to me to be the moment you decide to follow what this report states and thus once again, by fiat take away any hopes for the justice they are entitled to. No one, no staff or commission or report has the right to take those rights away. Not again. Not to once again use the force of flawed logic to allow the injustice to perpetuate. I honestly believe you are skilled and intelligent and can comprehend these points.

This commission has been charged with presenting a vote, which will come out as a finding of facts and law to determine the life quality of 19 streams, and the use of the waters from those streams. I offer to you that you have been given a set of statistics and simply defined parameters that do no justice, instead they only allow you a way out.

Jobs come and go, as do corporations. What is more important is righting a deep seated wrong that has been paid for by the grief of many generations.

I am asking you to do the right thing – do not follow a simplistic report that covers the simplicity with a lot of documented activity. Look deeper, to an older time when these streams supported so much more. They are our legacy. We owe it to give life back to these streams and all they represent. Restore more than just stream flow, you will be restoring justice.

Thank you for your time,

Sean Lester
Kula, Hawaii

63.0-3

63.0-4
December 16, 2009

Name: Jeffrey T. Pearson, P.E.  Phone: 808 877-1606
Affiliation: Water Manager, Maui Land & Pineapple Company, Inc.
P.O. Box 187, Kahului, Hawaii 96732
Email: jpearson@mlpmaui.com

Testimony on the INSTREAM FLOW STANDARDS ASSESSMENT
REPORTS; STAFF SUBMITTAL,
For the hydrological units of East Maui, Public Meeting of December 16, 2009

On behalf of Maui Land & Pineapple Company, Inc., thank you for allowing testimony on
this important issue of surface water use for east Maui. It is also appreciated that our
comments on the Draft report pertaining to reduced acreage and water use were
incorporated in the December reports.

In the CWRM December 16, 2009 recommendations on the Instream Flow Standard
Assessment Reports, for the Hydrologic Units of Hanawi (6064) and Makapipi (6065),
staff recommends approval of the following adaptive management strategy:

- In the response to the announcement that MLP will end pineapple production,
Commission staff shall seek to meet with MLP officials to determine the
disposition of surface water diversions and ground water wells. Of particular
concern is Naliku pump (REG 772.6) and the Kukiwa well (4806-48).

ML&P strives toward managing and utilizing all of our available water sources to allow
minimal impacts on the source, while meeting our current and future agricultural needs.
ML&P intends to continue agricultural activity on the Halimaile lands either directly or
through its lessees.

Maui Land & Pineapple management would like to meet with Commission staff to
discuss the disposition of surface and ground water use, and will follow up with staff to
arrange a meeting in January 2010.
To the Hawaii State Commission on Water Resource Management:

My name is Merlita Crespin. I am before you today in strong support of the diversion of stream flow because of the importance of agricultural uses of water.

I am a resident of Maui and have many years of experience working at HC&S in the lab. At work, I would monitor the boiler and compliance with emission levels. Working at HC&S has provided with income, benefits, and insurance for my family. When I first came to Maui from the Philippines we were even provided with housing by the company. As the years went by my husband and I worked very hard at HC&S and saved enough money to buy a home. When we were ill we went to the doctor or hospital because we had health insurance from HC&S. We had children who grew up and have a family of their own. When we retire we have a pension from HC&S. We have the American dream.

If HC&S does not have access to water, they will close the company. All those who work there, now and in the future, will have their dreams closed down too. Many people will not choose to come to Maui because there will be fewer jobs and visitors will not want to come because of all the abandoned houses, businesses, and homeless.

I do not see why a compromise has not already been made to share the water with HC&S. As union employees we have made many compromises to keep HC&S alive. If we can find a compromise at HC&S, why can’t we find a compromise on water?

Please continue the diversion of streams for HC&S and other providers of agricultural jobs on Maui. Thank you.

Sincerely,

Merlita Crespin
Thank you Commissioners for this opportunity to testify in front of you today.

Before I begin, I would like to thank for your hard work and due diligence in hearing the concerns of all involved with this water issue. Also for the countless hours that was put to gather the information for a decision in this emotionally and most controversial issue to the future of the county of Maui.

My name is Frederick Jason Kaleionaona Kuhia. I am a Third generation plantation worker as my father before me and my grandfather before him. I am in the Milibright Apprenticeship Program and on my final legs of the apprenticeship program before I become a full fledged journeyman. I have been employed by HC&$ for nearly 4 yrs now. Though I have not been employed as long as my fellow colleagues 10, 20 and 30 yrs long. But I am a product of the opportunity that my employer HC&$ have given me to take care of my family. A household of eight. Without this opportunity I would be a product of the system that I work so hard to NOT return to and be just another statistic. So out of the appreciation of what HC&$ have given me I stand here with emotional driven and a passionate testimony. I am also part of the committee that was created by myself and my fellow employees and known as Hui O Ka‘i because we are so concerned of this current water issue for East Maui streams, West Maui streams and Kalo farmers, as well as the many of the other farmers that are involved. Basically Agriculture in general.

I am very aware of the emotions that people have that came to speak on their behalf. I have watched many of my fellow employees get emotionally torn through this issue. Where they needed to make a choice of their personal lively hood or their families that are Kalo farmers. I could not believe my eyes of the changes that they needed to make and put their family ties on the side to fight in their beliefs. I can’t see that we as the community of Maui should have to take sides, but we all are stuck in making tough choices.

I have been up to Waikamilo stream to see that there is water flowing steadily down the stream. But it has disturbed me in knowing and seeing that there is the much water flowing down the stream and split by a natural division in the stream, whereas majority of the flow of water was falling in a sink hole, water that could be used by the farmers and the natural habitat. I did ask “is there anything that we as the committee could do to help this natural phenomenon” to bring back this water for use for the people. There was many great solutions suggested but none we could do to help at the current time, due to the fact that all of this fighting and arguments about the water issue. Personally can’t see all that water go to waste.

I asked another question “how many sinkholes are there?” the answer was boldly told “by the hundreds” with so many sinkholes that are in the East Maui streams, why can’t we fix this problem and stop blaming each other and take it, accept what we neglected for so long and make amends of what is done is done, let us not make a hundred yrs of finger pointing at each other before we make this right.

I hear so much that’s EM’s responsibility, EM is doing all they can with the allotted monies available for the repairs and maintenance of the waterways, ditches, and lowties. I hear from others that is the Kalo farmers responsibility, but they are way to angry from all their hurt to see through the veil of anger that they need to be a better part of the solution, so they can continue perpetuating the Hawaiian culture. I hear that it is the Kula community responsibility… I am tired hearing it… It is the Communities of Maui Responsibility to take hold of this situation and work together to help solve this problem, by doing this as a community not by segregation, so we can help the streams flow their natural course without putting anyone’s lively hood in jeopardy.

I feel for the Kalo farmers seeing their Lo‘i run dry, I believe that the Kalo farmers should get the water first for all their needs but not to put a company of such stature, an integral part of the Maui community in jeopardy. The hurt and anguish that these farmers had to deal with for all this time is a travesty, it is outright wrong… but doing two wrongs do not make right in any way shape or form. We should be working together to help each other overcome the hardships of the future for all agriculture Kalo farmers, Cattle ranchers, Kula farmers and HC&$, we are the future for Maui’s agriculture survival.

So many want to see HC&$ fall like all the other sugar plantations, So many say that we need to find other viable crops that has no need for burning. Does anyone know how many different viable crops that was
experimented in the past, HC&S have tried many different viable crops in past several years. All of those many different crops and even Kalo, yes even Kalo. HC&S tried dry land taro for many reasons it did not work out. My beliefs lead me in the thought of the main reason we did not continue in that venture cause of the heavy losses of the Kalo Farmers and many would’ve taken this as a insult to the Hawaiian culture and protocol. Can you imagine 37,000 acres worth of Lo’i filled with kalo. HC&S would flood the market to point that kalo has no bearing the market as a viable crop to Hawaii. At this point HC&S would need to change the name to HC&T, the fact that we did not pursue this venture is a good thing.

I have heard many testimonies in the past year, I have a lot of people who say bring back the water from mauka to mala for the fauna and the natural habitat. They say that the aina will heal itself, I believe that, but how long will this take? I believe that it wouldn’t take that long, what 1,2,3,10,20 yrs before things will come around where the fauna and natural habitat will flourish again. What will stop the non indigenous species come and conquer the stream beds. Some Kalo farmers already dealing with non indigenous species in their lo’i for example water snails and mud clams from the Philippines. To the point that they need to where rubber boots and gloves to clean and maintain their lo’i. Without this example what will stop the non indigenous species wipeout our natural habitat that will feed on our huiwai, opa and o’opu. Now with this thought in mind, what will stop the many people that will be looking for another way to make money to feed their families and come rape and pillage the streams. NO ONE!

We can sit here and say the state’s responsibility, it is Federal Jurisdiction, we can say many things the truth of the matter is the state got no money to keep our kids in school, the federal can not help us, they are busy trying to find the money to bail out the financial institutions, so where, who and what. Is going to help to make this. Environmentalist? They got way to much on their hands to fight and keep our streams from rape, pillage and non indigenous species, all they care about is the stop of the cane burning and the GMO’s as a viable crop and using this water issue as a tool to hopefully finally shut down the last sugar plantation in Hawaii.

Now I do know that some of the Kalo farmers uses pesticides along their lo’i beds. Now these pesticides that are used to stop non indigenous species for what ever there is are eventually going into the streams it doesn’t just go downstream some pesticides go up stream and contaminate all the lo’i beds that comes into contact with. So why is the environmentalist not compounding and pursuing these kalo farmers that are doing such.

For many reasons people will ask what this have to do with water, simple poison goes in the water will end up in the lo’i patches and stream beds and eventually into the sea. The justifying of the water returning to the streams with this kind of misuse and mishandling will do more damage than not having water at all down these streams.

As it was said in the news last night “ water is a public trust not for the big cooperation’s, not for the plantation stats of mind” quoted by Isaac Moriwake. He’s got one thing right it is a public trust, a public trust for the greater good of the public, where the majority of the public resides. This is a democracy that we live in, and we should look at this is in the same manner.

Aloha and thank you for your time …

Frederick Ino Keleopatana Kuhia

66.0-3
From: Penny Levin  
224 Ainahou Place  
Wailuku, Hawai‘i 96793

Date: 16 December 2009

RE: Testimony regarding the

Aloha Water Commission Members;

As a taro farmer I am affected by the decisions of the water commission no matter what my taro grows. The 19 streams and the nearshore waters that depend on those streams for healthy nearshore fish habitat have been waiting for water to be restored for 150 years. There are important facts to consider beyond the current moment in time.

The state and the general public has assumed that sugar, pine and ranching were the first and most important agriculture industries in these islands. It was not. Taro was the first agriculture and the first agriculture industry in the state well into the mid-1800s. When the ditch systems were completed, it put hundreds of taro farmers and poi millers out of business and disbanded the families and communities that supported them. Most people are under the impression that the only significant taro growing places in East Maui were Wailua and Keanae, with the majority being at Na Wai Eha. This is untrue. Historic records shows that Maui was the largest provider of taro among all the islands, including Kauai, and that an area larger than Na Wai Eha was in taro production was located in East Maui. When HC&S says it might lose 500 or 800 jobs (I notice the number has been growing over the last few months), it fails to recognize how many people’s livelihoods and communities were dried up with the taking of the water from the streams they belonged.

More importantly, the recommendation up for consideration today asks that the public – in this case taro farmers – bear the burden of proof for need of water. HC&S, A&B, EML and WWC (WAB) have never provided clear proof of the need of water in their system. The law states that the stream and kuleana users are of the highest priority. The burden of proof then must be to the agriculture industry to provide concrete evidence of user need for their requests of water. The recommendation must be made based on this and not on the voice of Native Hawaiians and taro farmers to prove their need for water when they can not grow taro without water. CWRM staff recommendations fail to protect those rights and needs.

The larger issue here is also how do we create more water for additional county needs, including agriculture. As a conservation planner, I look at the whole system. First and foremost, restoration and improved management of the watersheds that support the aquifers and streams of Maui have never been a required part of the dynamic of water management by CWRM. The creep of non-native species, particularly the bamboo and strawberry guava that is taking over the mid-elevations of much of East Maui’s north
facing shores, has a significant impact on water availability for the area. Studies from Hawai‘i Island have shown that guava takes up more water and transpires more water than native species. Bamboo, like sugar cane is a water hungry plant. These studies are available through USGS and DLNR. EMI maintains a corridor where the ditch systems occur but has never been tasked with restoring the watershed lands which they lease from DLNR.

Secondly, agriculture industry in Maui has only begun to consider the tip of the iceberg in water saving agricultural practices. Sugar is the most water hungry crop on the planet. No significant acreage, only demonstration size fields in limited areas, have been devoted to alternative crops. Diversified agriculture doesn’t mean switching one crop for another crop; true diversification means dozens of crops within the same space, a practice implemented by many farmers around the world. A shift in soil management practices would also perhaps halt the massive erosion that occurs from their fields onto Maui’s reefs at every major rain. The water and soil loss that occurs under the present system of practices has never been taken to task by CWRM as part of the industry burden of proof for water allocation. Soil erosion means that soil is not holding onto water long enough and that water is not returning to Maui aquifers.

Additionally, if the ditch system were repaired, more water would be realized. Since the arguments the sugar and pine companies would like you to believe says that they need the water that they have now, I strongly urge that when you make your final decision, you attach a requirement that the system be repaired within three years and that all subsequent gains be restored to the streams. As sugar and pine are declining in acreage no more water, their allocation of water should also decline accordingly based on an annual reporting of acreage in production that is verified by CWRM staff.

Finally, I ask the Water Commission to respect and uphold the law. Delay this decision until the burden of proof of HC&S and MDWS, and the IIFS are complete.

Mahalo

Penny Levi
68.0 Pukalani Superette, Aric Nakashima

Testimony

Re: Staff Recommendations for Interim Instream Flow Standards for 19 Streams in East Maui

Chair Thielen and Members of The Commission,

My name is Aric Nakashima, owner of Pukalani Superette. We have served Maui for over 50 years. I am before you today in strong support of the interim instream flow standards staff recommendation for the 19 streams in East Maui.

Pukalani Superette has a very strong commitment to buying from local farmers and ranchers. Come to our store ...you will see local lettuce, tomatoes, cucumbers, zucchini, beef, asparagus, bell peppers, cabbage, won bok, and onions in addition to the many value added products made from them. We have a deli section that is very popular for the working people and we use all of these local ingredients in our dishes. The possibility that we may lose our farmers and ranchers due to the lack of water is very troublesome. The impacts of shipping strikes and other transportation related crisis is reduced by purchasing from local farmers and ranchers ...take away the local and we become no different from the other chain stores. We are doing all we can to help Maui increase its' self sufficiency. The farmers and ranchers work hard and I have seen many go out of business due to various problems. I do not want to see this decision force more of them out of business. I understand the staff recommendation recognizes the importance of agriculture as an offstream use of water.

I therefore, respectfully ask the Commission to take prompt action to approve staff recommendation. Thank you for this opportunity to give my opinion.
Testimony to the Commission on Water Resources Management

December 16, 2009

John Brooks

Madam Chairwoman, Ladies and gentlemen of the Commission on Water Resources Management, my name is John Brooks. I am a resident of Up-Country Maui; I have been employed by several agricultural operations based in the up-country area and share a small pasture program with my extended family to provide freezer beef for us to eat.

I am here tonight in that capacity and would like to make several comments on the rulings that your group is going to pass down as law. That is the effect that any loss of water coming into the ditch will have on the entire up-country community. While the Maui County Farm Bureau has done a lot to trying to explain the ramifications of potential losses to the county’s domestic water system. Anyone who gives it much thought should realize that agriculture will be the first place cutbacks will be felt.

Interestingly enough, with the exception of Mr. Clark Hashimoto, I have not seen any representative of the county out there with Ag trying to defend and protect us.

While the Media has provided extensive coverage of the efforts of HC&S and the plaintiffs, they seem not to realize that loss of water collected by the ditch system could mean significant water shortages to every residence and business in up-country. When I asked the commission staff if this was possible the answer was yes, the flow in the ditch could get so low that there would not be enough water for the county to get at the Kamaole Weir. This could mean no water for us to drink. I would also add that no agency, including the Maui County Department of Water Supply, has acknowledged this. If you were to ask most people if they understand and could explain the possible effects on them as up-country residents, I think they would not be able to.

I fully support the recommendations that the staff has made to you. While I would hope that you would enact them as proposed, I realize that you may not. However, I would ask you the same question that you staff asked in a questionnaire that came out, I may have the wording wrong but the gist is right:

If you had to live with (10%, 15%, 20%, and 25%) less water available how would you be affected?
My answer is that I would have to get rid of some or all of my family’s cattle. For other ranching operations and commercial farms this could mean that they would have to shut down. If there is a concern that there could be periods of no water, they will certainly shut down. Most agriculturists will plan for the worst case scenario, no water, no crop be it fruit, veg or meat. In closing, much could be made about the lack of direct participation by farmers and ranchers. I will tell you that farmers and ranchers are a pragmatic lot; they also tend to be reluctant to appear at public hearings. Understand that they are out there and very concerned. As far as input and information from the general public, I believe that it is due to a lack of understanding on their part. Whose fault is that?

Thank you,

John Brooks
Olinda, Maui, Hawaii
MAUI CATTLEMEN'S ASSOCIATION

TESTIMONY
December 16, 2009
Submitted via email: dnr.cwrm@hawaii.gov
FROM: Maui Cattlemen’s Association
TO: Commission on Water Resource Management
Kalanikuli Building
1151 Punchbowl Street, Room 227
Honolulu, Hawaii 96813

HEARING DATE: Wednesday, December 16, 2009 Paia Community Center

CONCERN: East Maui in stream flow, Agriculture and Domestic needs

The Maui Cattlemen’s Association is a non-profit organization representing small and large livestock producers in Maui County.

We support the efforts that the Commission on Water Resource Management is making towards instream flow restoration. The recent Commission Staff report suggests that a balance can be made between the needs of the natural environment, human consumption, and agriculture requirements. With the current water sources available, we believe there can be a balance for all, provided we work together. In addition, we support and strongly advocate the idea of improving the current delivery systems, as well as developing high flow harvesting systems and storage facilities. These improvements would complement and work together with the current delivery systems. Please be mindful, that the instream and offshore uses protect all of Maui County, when decisions are made. Agriculture crops, as well as human consumption that rely on the entire system will be affected without these waters.

You may contact Maui Cattlemen’s Association President, William Jacintheo, through the information provided above, or Vice-President, Amber Starr, at (808) 573-6444.

Thank you,

William Jacintheo, President

Amber Starr, Vice President
Statement to the Hawaii State Water Commission:

Please support the continued diversion of stream water flow for agricultural use.

I believe taking away the water flow diversion will hurt people’s jobs. Without these jobs what will the people do? This is a bad economy and it is hard to find a good job. HC&S employs a lot of people and where will they go?

Please think of the families that will be affected by this decision. Please continue the diversion of stream water flow for agricultural use by agricultural companies and farmers.

Mahalo,
December 16, 2009

TO: Commission on Water Resource Management (CWRM)

RE: Improvements to the Staff's Recommendation concerning the Distribution of Water from the East Maui Watershed

Maui Tomorrow recommends that the CWRM incorporate and adopt the following language (bold & underlined sections) as improvements to the General Recommendation portion of the Amendments to the "Interim Instream Flow Standards For the Surface Water Hydrologic Units".

GENERAL RECOMMENDATIONS:
Staff recommends approval of the following adaptive management strategies shall be adopted for the 22 hydrologic units being considered:

IMPLEMENTATION

1. Staff shall seek to enforce the provisions of the State Water Code should any unauthorized, non-registered or non-permitted diversions be discovered in the course of its fieldwork. Staff recommends that all owners of unauthorized diversion works structures contact staff to file the necessary applications to seek compliance with all permitting requirements set forth by the Code.

2. Staff shall continue to coordinate with watershed landowners, including EMI, to identify and determine appropriate actions with regard to attaining the proposed interim IFS values downstream of existing diversion structures.

3. Staff shall recommend continuation of month-to-month watershed leases to EMI/HCAS during first two years of implementation and monitoring efforts to ensure accountability for adequate compliance with long-range IFS and watershed "adaptive management" approach.

4. Staff shall continue to assess existing conditions and the status of all EMI diversions, in coordination with EMI and the Division of Aquatic Resources (DAR), to determine if any modifications are possible to improve habitat conditions for stream biota.

5. Staff shall require EMI/HCAS to cooperate with any controlled stream water release programs deemed beneficial by DAR and USFWS for Wailuaiki, Haipuena, Hanawi, Puohakamo, Honomanu and Waikamoi to allow for further studies in these 6 streams identified by USFWS as known habitat for the endangered "Megalaspis pacificum" (Pacific Hawaiian damselfish) and "Megalaspis resedae" (the earwig damselfly). Furthermore, require EMI to cooperate if any of their land holdings are included in future USFWS efforts to designate critical habitat for these species.

Note: Federally protected species should have their habitat needs recognized and met through the Commission's IFS implementation efforts.
6. Any party diverting water from a stream shall be responsible to maintain system efficiencies, minimize offstream water losses, and minimize impacts to the natural stream resource as evaluated by management standards developed by CWRM staff in consultation with representatives of parties to the IFS action. Management standards to be met will be reviewed and approved by the Commission. Progress towards these goals shall be recorded in quarterly update reports sent to CWRM and representatives of parties to the IFS action, reviewed by DOCARE, and publicly posted on the CWRM website.

NOTE: With no process defined to set management standards for the diversions systems and the streams which they impact, diverters have no guidelines to follow to fulfill the intention of this implementation action. How will CWRM staff know if any of the goals in the above statement have been met? Suggested language has been added.

MONITORING

7. EMI and Maui DWS, on forms provided by the Commission, shall notify Commission staff when any considerable repairs or maintenance to existing stream diversions structures are performed in the future. Any alterations to existing stream diversions that will substantially change the divertible capacity will still be subject to the provisions of the State Water Code, Chapter 174C, HRS.

8. Within one year, EMI, in coordination with Commission staff, shall develop a monitoring plan to provide data on the amount of water diverted by the EMI system from east Maui streams. This shall include identifying existing gauging stations and the possible installation of additional gauging stations. SUGGESTED LANGUAGE: Installation of additional gauging stations in key stream locations, as recommended by USGS, DAR and USEWS, to help supply data needed by future habitat and watershed studies.

9. Within one year, Maui DWS, in coordination with Commission staff, shall develop and implement a monitoring plan to accurately determine system losses on the entire DWS upcountry delivery system, Waikamoi Upper Flume, Upper and lower Kula Pipeline. This (may) shall include installing any needed gauging stations to measure flow of water into and at the terminus of the Upper Flume.

NOTE: The entire upcountry water system is known for its deteriorated and outdated transmission system. If system-wide losses can be determined, solutions can be sought. Needed language has been added.

10. Within one year, staff shall submit a proposal for a System Losses study of the entire EMI ditch system with recommendations for prioritized actions to increase system efficiency. This could be part of the state’s updated Agricultural Water Use and Development Plan. Costs could be shared by A&B, County DWS and perhaps USGS.

Note: This action has been overlooked, but is a key part of restoring efficiency to the ditch system so many people depend upon.

11. EMI and Maui DWS, in consultation with Commission staff, shall regularly report monthly rainfall and water use or related monitoring data (e.g., ditch flow, reservoir levels, pumpage amounts, etc.) on forms provided by the Commission.

12. Within one year staff shall work with Maui DWS to appoint a task force to design a transition management plan for the EMI water delivery system if H&C&S should cease farming operations. Task force members should include local residents with backgrounds in economics, engineering, agricultural irrigation, biology, Hawaiian cultural practices, business and resource management and include East Maui residents.

Note: This is a key element overlooked in the East Maui watershed management strategy plan. It is clear from the land history of contracts and the A&B agricultural partnership in the various ditch systems between 1978 and 1925 was "negotiated" by the Kingdom/Territory/State of Hawaii through their consideration of allowing water to be extracted from the streams at artificially low rates.

13. Staff shall monitor streamflow by taking periodic flow measurements, subject to available funding, at the proposed interim IFS locations, as weather permits. These will be point-in-time measurements; however, the installation of stream gauging stations remains (an option) the priority monitoring mechanism for long-term management.

NOTE: 110 Stream gauging stations once existed, located on virtually every major diverted east Maui stream. With changing climate conditions accurate flow data from the gauging stations is needed now more than ever, as demands on streams increase.

14. Periodic biological surveys shall be conducted, subject to available funding, to monitor the response of stream biota to post-interim IFS implementation.

15. Staff shall require quarterly testing by Maui DWS or State DOH of stream waters which supply local communities or are regularly used for recreational swimming by tourists or residents. Waters should be tested for common waterborne diseases such as typhoid, giardia, leptospirosis, cryptosporidium, dysentery, etc in areas where community supplies are withdrawn or areas used for recreation.

16. Staff shall require HC&S/EMI, within one year, to develop and implement a plan for periodic “flushing” of East Maui streams during low flow periods to protect public health and improve the water quality of impaired streams.

17. Staff shall require peer-reviewed studies on the effect of stream flows on water quality and the presence of waterborne pathogens in East Maui streams.

NOTE: The staff Recommendations had no actions to address public health issues for residents and visitors who use east Maui streams, yet the majority of streams have waters regarded as “impaired” in some manner by the DOH under Federal Clean Water Act standards.

18. Staff shall require a Watershed Health levy fee structure (of 3 cents per 1,000 gallons) on a 2-year trial basis for water extracted from the watershed and possibly other activities on state watershed lands. Fees collected would be used for needed watershed maintenance and improvements, research and management activities described in this Recommendations section.

NOTE: Without a new source of funding, activities necessary to watershed health will never be undertaken, thereby jeopardizing water security for residents, farmers, ranchers and the plantations. A fee of 3 cents/1,000 gallons should generate approximately $1.7 million per year, an amount barely adequate to implement the recommendations in this document.

19. Any party claiming to be negatively impacted, which would include the streams, forests and oceans, as a result of the adopted interim IFS shall monitor and document, in cooperation with staff, the impact upon instream or nonstream uses, including economic impacts. Data shall be provided to staff to substantiate any claims. Staff shall ensure parity between the claims of traditional community users by offering assistance to those who may not be able to hire outside consultants and corporate water users able to pay for extensive studies.

Furthermore, a fund shall be established by A&B Foundation which sets aside $100,000 a year as potential grants for community based East Maui watershed research, maintenance and improvements. Community organizations in the areas affected by this decision will be eligible to submit proposals and be awarded these grant funds, regardless of whether or not they had previously contested EMI use of the stream water.
Note: While HC&S /EMI and their parent company A&B, Inc can afford to hire their own biological consultants and have crews with easy access to the watershed lands, conditions for local residents in remote, rural east Maui communities are very likely to be much different.

Unless CWRM staff help establish a fair process, local community members will need to find volunteer expertise for stream monitoring; take time from families and work to conduct regular monitoring; be denied easy access to streams and watershed areas, and will likely have their efforts challenged by professional paid consultants.

EVALUATION

20. Within one year from the date of adoption of an interim IFS, HC&S shall be required to prepare a report on progress made towards its transition to alternative crops and agricultural methods, alternative water source development (including use of reclaimed water from Kahului treatment plant) and water efficiency/conservation operations. The Commission should develop target stream water reduction goals that should be met, and establish consequences, such as the loss of a proportion of East Maui stream flows, if no verifiable progress can be proven at the 3 and 5 year benchmarks.

21. Within one year from the date of adoption of an interim IFS, HC&S shall be required to prepare a yearly report on progress made towards development of additional alternative energy systems, which could be utilized to pump their wells and relieve pressures on East Maui streams during the drier season.

Note: The Commission is allowing valuable public resources to be used for a private, economic purpose. It has a fiduciary responsibility to hold HC&S accountable to its claims of transitioning to new crops, energy and water use technologies. The two evaluation actions above would meet that responsibility.

22. Within one year, EMI shall report to the Commission on the status and implementation of their monitoring plan, the locations of the gauging stations, and provide detailed monthly data on the volume of water diverted and the volume, end users and end uses of water delivered through the EMI system.

23. Within one year, the Maui DWS shall report to the Commission on the status and implementation of their monitoring plan, the condition of the Upper and Lower Kula Systems, results of monitoring system losses, steps being taken to improve system efficiencies, and continue to provide detailed monthly data on the volume, end users and end uses of water delivered through the Maui DWS system.

24. Staff shall assess the implementation of these strategies on an as-needed basis, as may be necessary upon consultation with the affected parties.

25. Staff shall continue to provide quarterly updates to the Commission which are also posted on the CWRM website during the course of the year. Such reports shall include an evaluation of the fulfillment of the State’s constitutional obligation to provide sufficient waters, through the East Maui stream system to kalo growing operations on DHHL lands in Wailuanu and DHHL residents and farms in the upper Kula area.

NOTE: The responsibilities to provide sufficient water to DHHL lands in the upcountry and east Maui area is discussed in the assessment, but the above language addresses the need for accountability towards that obligation.

 Should there be changes to the operational status of HC&S, changes to the current water uses declared by HC&S, and/or any substantial changes in water needs as determined by the Commission or Commission staff, staff shall reassess the interim IFS for streams affected by the EMI System.

NOTE: This action does not appear to have language that would clearly conform to the purposes or intent of the State Water Code in its protection of instream uses. The Waiahole Court noted: HRS 174C-71(2)(C) requires that petitions to adopt interim instream flow standards ‘set forth data and information concerning the need to protect and conserve beneficial instream uses of water and any other relevant and reasonable information required by the commission.’

While many beneficial instream uses were identified in the staff report, it still concluded that the majority of flows should be diverted for A&B’s agricultural activities. If those activities cease, without a successor, all water not needed by the county for domestic and small farming use should, by law, be considered needed for beneficial instream uses and returned to its natural home, the streams. We would suggest substitution of the language below.

26. Set standards and timetables for return of waters to East Maui streams if there are changes to water uses declared by HC&S, and/or any substantial changes in water needs (for example by ML&P lands) as determined by the Commission or Commission staff, or if HC&S ceases or severely restricts agricultural operations and has no viable agricultural successor.

It shall also be understood by all parties that neither A&B, Inc nor any of its subsidiaries (EMI/HC&S) have a vested right to the waters in the East Maui streams and watersheds.

27. Whether or not Maui Land and Pine resumes full agricultural operations, the Commission shall require a water-sharing agreement between HC&S and the DWS to utilize a portion of any water pumped from the Kahiwa well to meet the needs of Upper Nahiku residents and businesses with potable water supply.

28. The Commission shall also enforce all conditions and terms of the October 1991 consent agreement between the Hana Community Association, CWRM and ML&P regarding conditions which must be met during the use of the Kahiwa well and the Hanawi pumping station. This shall include making information obtained from all monitoring and reporting requirements mandated under the consent decree available to the Hana Community Association and the Nahiku Community Association.

NOTE: The Kahiwa well, located in Nahiku has been pumped a few months a year by ML&P since 1990 and its water dumped into the Koolau ditch for transport to the upcountry pineapple fields. Nahiku has a very limited public water supply and some residents face exposure to waterborne illnesses due to inadequate water infrastructure in the settlement areas East of lower Nahiku road. Both the Well and a pump at Hanawi stream are the subject of a 1991 consent decree.

Respectfully submitted,
Irene Bowie/Executive Director
director@maui-tomorrow.org
808.244.7670

PETITION TO SUPPORT WATER FOR SUGAR CANE PRODUCTION

We, the undersigned, hereby implore the State Commission on Water Resource Management, when setting interim instream flow standards for East and West Maui streams, to ensure that an adequate amount of stream water is available to HC&S for the irrigation of its crops so that the many benefits provided by HC&S to the State of Hawaii and the community are sustained and the vast green fields of Central Maui are kept in agricultural production.

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PETITION TO SUPPORT WATER FOR COMMUNITY USE

We, the undersigned, hereby implore the State Commission on Water Resource Management, when setting interim stream standards for East and West Maui streams, to ensure that sufficient water is made available to sustain off-stream uses. These uses include our County water systems, providing essential water for our homes, businesses and community facilities such as schools, parks and community centers; and agriculture, such as use by HC&S, and farms and ranches in Upcountry Maui, which keep our island green and rural in character. Use of stream water is key to ensuring that we—and our children—will be able to continue to enjoy a strong economy and healthy society on Maui, now and in the future, thus providing the greatest good to the community as a whole.

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<td>Jack O.</td>
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We, the undersigned, hereby implore the State Commission on Water Resource Management, when setting interim streamflow standards for East and West Maui streams, to ensure that sufficient water is made available to sustain off-stream uses. These uses include our County water systems, providing essential water for our homes, businesses and community facilities such as schools, parks and community centers; and agriculture, such as use by HC&S, and farms and ranches in Upcountry Maui, which keep our island green and rural in character. Use of stream water is key to ensuring that we—and our children—will be able to continue to enjoy a strong economy and healthy society on Maui, now and in the future, thus providing the greatest good to the community as a whole.

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<td>Paraski A. Inch</td>
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<td>RICHARD F. CAMERON</td>
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<td>AMY K. NOGA</td>
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We, the undersigned, hereby implore the State Commission on Water Resource Management, when setting interim instream flow standards for East and West Maui streams, to ensure that an adequate amount of stream water is available to HC&S for the irrigation of its crops so that the many benefits provided by HC&S to the State of Hawaii and the community are sustained and the vast green fields of Central Maui are kept in agricultural production.

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<td>John</td>
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<td>F. F. F.</td>
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<td>A. Cabe</td>
<td>Alex Cabe</td>
<td>461 N. Papa Ave, Pukalani</td>
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<td>T. Sekine</td>
<td>Tony Sekine</td>
<td>927 Hilihi St, Hana H1 96760</td>
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<td>W. K. Kauai</td>
<td>Wesley Kauai</td>
<td>341 A Hiloani, Pukalani</td>
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<td>7</td>
<td>M. Gali</td>
<td>Miguel Gali</td>
<td>220 Kahiko St, Paia</td>
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<td>J. Pachico</td>
<td>Jason Pachico</td>
<td>470 Kuarana St, Paia</td>
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<td>9</td>
<td>M. Ramirez</td>
<td>Margarita Ramirez</td>
<td>331 OHA St, Kula</td>
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<td>W. Ramirez</td>
<td>William Ramirez</td>
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<td>N. Uezono</td>
<td>Naoko Uezono</td>
<td>291 Pa'auhi Pl, Kula</td>
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<td>12</td>
<td>C. Leval</td>
<td>Clyde Leval</td>
<td>1039 waiveku St, H1 96793</td>
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PETITION TO SUPPORT WATER FOR COMMUNITY USE

We, the undersigned, hereby implore the State Commission on Water Resource Management, when setting interim instream flow standards for East and West Maui streams, to ensure that sufficient water is made available to sustain off-stream uses. These uses include our County water systems, providing essential water for our homes, businesses and community facilities such as schools, parks and community centers; and agriculture, such as use by HC&S, and farms and ranches in Upcountry Maui, which keep our island green and rural in character. Use of stream water is key to ensuring that we—and our children—will be able to continue to enjoy a strong economy and healthy society on Maui, now and in the future, thus providing the greatest good to the community as a whole.

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<th>No.</th>
<th>Signature</th>
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<tbody>
<tr>
<td>1</td>
<td>M. Bartolome</td>
<td>Marcos Bartolome</td>
<td>229 5. Lehua St, Kahului</td>
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<td>2</td>
<td>W. Sumida</td>
<td>Enoj Sumida</td>
<td>610 Olona St, Wailuku</td>
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<td>S. Sawai</td>
<td>Gina Sawai</td>
<td>810. Oheo St, Wailuku</td>
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<td>K. Whitmer</td>
<td>Keith Whitmer</td>
<td>30 Aku Pl, Pakalani</td>
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<td>B. Nelson</td>
<td>Brandon Nelson</td>
<td>81 Kulalani Drive, Kula</td>
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<td>6</td>
<td>J. Serjant</td>
<td>Jeremy Serjant</td>
<td>412 Can St, Kula</td>
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<td>7</td>
<td>J. W. Knapp</td>
<td>John W. Knapp</td>
<td>27 Alelele Place</td>
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<td>8</td>
<td>D. Leader</td>
<td>Debra Leader</td>
<td>741 Makapu St, Kailua</td>
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<td>9</td>
<td>R. Perreira</td>
<td>Roland Perreira</td>
<td>840 Hiku KI, 96708</td>
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<td>10</td>
<td>L. D.</td>
<td>Mary Dambra</td>
<td>520 Nekoa St, Wailuku H1 96773</td>
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<td>11</td>
<td>W. Domingo</td>
<td>Wagina Domingo</td>
<td>762 Poi'aku St, Kula H1 96792</td>
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<tr>
<td>12</td>
<td>F. Valdez</td>
<td>Filomena Valdez</td>
<td>116 Nanaau Pl, Kula</td>
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Aloha. My name is Elaine Wender. When I read the staff recommendations, my first reaction was utter disbelief. And then, I cried.

There is ample scientific data presented by USGS and DAR, but instead of utilizing that data and making some intelligent recommendations, the submittal reads like a press release from A&B. The Hawaii Supreme Court has said that if the diverter fails to show how much water it needs, your analysis must cease. So once again, it looks like the court will have to instruct you on your public trust obligations.

There is talk about fixing flumes and minimizing water loses but there are no consequences for failing to do so.

The draft states that “the current interim IFS became effective on October 8, 1988. Streamflow was not measured on that date; therefore, the current interim IFS is not a measurable value.”

But now in the final reports, you have supplied numbers. Where did these numbers come from? And why don’t they all consider the flow at the stream mouth or terminal waterfall, instead of an arbitrary mauka location?

I have recorded rainfall and streamflow records for Waikamilo Stream since 1983. 1988 was one of those rare years when there was a perennial flow during the entire year. Since it is one of the most heavily diverted streams below the ditch, it is likely that the other streams being considered also flowed all year. So, if we have status quo, does that mean all the streams should flow?

I want to thank the commissioners for your insights this morning. I hope that during your deliberations, you make extensive use of the presence of DAR, USGS, OHA and the petitioners and use their expertise to hammer out some recommendation which follow the law and to defer these proceedings if necessary.
As to which streams to restore, people will go to gather where there is something to gather. Personally, I appeal for the priority of restoration for East and West Wailuaiki, Kopiliula and Honomanū.

A&B's failure to be a good steward of the watershed has resulted in its extreme degradation. My metaphor for the situation is the frequent vision of banyan trees, an invasive species whose roots grow deep into the water table, growing out of native 'ohia. This, in sum, is what has been done.

I ask you to imagine for a moment what East Maui would look like if the streams flowed free. Then imagine a company coming in to try to build the system which now exists. I do not believe that anyone in this room would allow it to happen. It is only because it has existed for so long that some are numb to the devastation that it creates.

Thank you for this opportunity to speak.
Chair Thielen and Members of the Commission:

Thank you for this opportunity to testify on the setting of interim instream flow standards in East Maui. My name is Chris Benjamin, General Manager of HC&S.

I would like to commend the commission staff for the very thorough analysis they have performed of the 27 East Maui streams, including countless hours—many here on Maui—spent researching and understanding the facts that enable you to make this critical decision today. The staff worked expeditiously and under very difficult conditions given staffing shortfalls and budgetary limitations.

Last year the Commission acknowledged a need for an ‘integrated approach’ to all 27 streams, while also acknowledging the benefits of accelerating action on eight of those streams that were considered most critical to native Hawaiian and environmental interests. If you adopt the staff’s recommendation before you today on the remaining 19 streams, you will have taken a reasoned, balanced and fair approach to fulfilling the state water code’s mandate for setting IIFS. When looked at in totality, the Commission will have returned nearly 13 million gallons per day (mgd) to East Maui streams for native Hawaiian, stream life and other instream uses. This is 13 mgd of additional water, provided on a first priority basis before any water can be diverted for offstream uses. The Commission’s decisions also will have solidly recognized the social and economic benefits derived from offstream use of stream water, including the importance to the community of the jobs, businesses, crops and energy generation supported by the use of East Maui stream water by HC&S, the County of Maui and numerous Ucountry farmers and ranchers. These are things that are vital to maintaining the fabric of Maui’s society.

You all know the significant negative impact of the economic downturn on the public and private sectors in Hawaii and on Maui. And you know that the shutdown of HC&S would add tremendously to these economic woes, so I will not elaborate on that here. Instead, I’d like to explain why your decision is so critical to HC&S’ survival. With expected operating losses of more than $30 million this year, which followed on the heels of the more than $13 million lost in 2008, our Board of directors faced a difficult decision in January when it meets to determine whether HC&S should stay in business. The decision will be based on our view of the future, not the past, and nothing will influence our view of the future more than water availability.

Water equals yields and yields equal survival. It is the decline in yields due to drought that created our current financial difficulties, and so the assurance of adequate water in the future is a prerequisite to continued operation. If insufficient water is made available for HC&S’ use in the IIFS process—in effect, imposing a regulatory drought—it would mean a future of continued losses.
Chair Thielen and Members of the Commission
Page 2
December 16, 2009

Staff’s recommendation is clearly substantiated by the Instream Flow Standards Assessment
Reports that were prepared for these 16 hydrologic units, or 19 streams, indicating that water for
native Hawaiian uses were addressed in the IIFS set last year, and that there are no active two
diversions identified on these 19 streams, except for one stream that is not diverted by EML.
Further, the IFSARs indicate that stream biology, on the whole, was found to be in healthy
condition. Many diverted streams in fact had good—in some cases excellent—habitat
availability. Other streams, with “limited” habitat were still found to have good diversity of
native species.

We therefore strongly urge the Commission’s approval of the staff recommendation, with one
amendment in regard to Makapipi Stream. There is a known sinkhole in the stream, which is
believed to have resulted from heavy rains in 1994, located below Hanu Highway and above the
habitied area of Nahiku. If the restored flows end up in the sinkhole, and do not achieve the
intended instreams benefits, we submit that the IIFS should revert back to the 1988 “status quo”
IIFS to support offstream benefits to the community. Thus, the recommendation (in the last
sentence of the first bullet point on page 54) should be amended to say “Should an estimated
flow of 0.93 cubic feet per second not significantly benefit the intended instream use(s), the
interim IFS shall revert back to the designation on October 8, 1988.”

Again, we would like to thank the Commission and commission staff for your efforts to complete
action on all 27 East Maui stream petitions in a timely manner. We strongly urge your approval
of the staff recommendation with the one clarification. It is a fact-driven, reasoned
recommendation that, when taken together with the action of last September, represents a
balance of interests—a recognition of instream and offstream uses of water—that will best
benefit the people of this community and certainly one that supports the 800 Maui residents who
are working very hard to keep HC&G alive.

Respectfully submitted,

Christopher J. Benjamin
Plantation General Manager
Chair Thielen and Members of the Commission:

My name is Dean Okimoto and I am the President of the Hawaii Farm Bureau Federation. Farm Bureau is in strong support of the staff recommendation regarding the 19 streams in East Maui.

Without water there can be no agriculture. Farm Bureau’s mission is to make sure we have farmers and ranchers for future generations so we can increase Hawaii’s self sufficiency and long term sustainability. And agriculture is not just about food…it is about energy, and it is about landscaping with flowers and plants. We play a role in preventing invasive species a major threat to watersheds. The health of watersheds is critical to ensuring that what rainfall is available can infiltrate into the forest floor. Invasives interfere with the process and our landscape industry has proactively developed a code of conduct to reduce such risk.

Our farmers and ranchers need water to grow their crops and raise their livestock. I want to thank the Staff for spending considerable time trying to understand agriculture’s needs...it is required in the law, that offstream uses must be balanced with instream uses along with the impacts of reduced diversions.

And, agriculture’s affects reaches across industries. Hawaii’s aura is expressed in its’ people and agriculture. I have with me a letter from Chef Roy Yamaguchi of Roy’s Restaurants. All of the chefs are very worried about the decisions that will be made in these hearings. Their success is dependent on fresh local agriculture. They have invested their operations into it and continue to reach out to farmers and ranchers…but all of this will fail if there is not enough water.

There have been accusations of water banking. Farm Bureau worked for 30 years...we don’t give up easily for what we believe in...to make sure we protect and preserve Important Agricultural Lands as mandated in the Constitution. I was especially pleased when Alexander and Baldwin designated major landholding...all of which are in active farming. That is what agriculture is...not lines on a map. Designating lands as ag without farming on them is meaningless...it is only a dream. With this done, it is important that we direct our resources to support these lands. I know in so doing we will support the rest of agriculture because all is interrelated...whether it be through bulk purchases or shared infrastructure.

I would like to again thank the staff for all of their hard work. We expressed our concerns on the process and you listened. Thank you. I urge the Commission to support the staff recommendations and provide a timely decision. Thank you.
77.0 Na Hoilina A Maui Hikina

In testimony requested from the public and private sectors on the island of Maui, Dec. 16, 2009.

Proposed foreign Administrative Conduct to be consented to, in general by all who are subject to the de jure trust in which all free flowing water is held in part by the co-patentees in whose possession is and are held currently as incepted the fundamental and vested patented water rights which descend from original patentee to successor patentee as set forth in the Kumukanawai a ke kanawai Hoponopono Waiwai, dated and ratified on June 7, 1839.

PROPOSALS AND REPORT SUBMITTED BY:
LINDA LINGLE
GOVERNOR OF HAWAII
LAURA H. THIELEN
CHAIRPERSON
WILLIAM B. BALFOUR, JR.
SUMNER ERDMAN
NEAL S. FUJIMARA
CHIYOMI L. FUKINO, M.D.
DONNA P. K. KIYOSAKI, P.E.
LAWRENCE H. MIKE, M.D., J.D.
KEN C. KAWAHARA, P.E.

STATE OF HAWAII DEPUTY DIRECTOR
DEPARTMENT OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
P.O. BOX 621
HONOLULU, HAWAII 96809
STAFF SUBMITTAL
For the meeting of the
COMMISSION ON WATER RESOURCE MANAGEMENT
December 16, 2009

Paia, Maui
Petitions to Amend the Interim Instream Flow Standards For the Surface Water Hydrologic Units of Waikamoi (6047), Puokamoa (6048), Haipuana (6049), Punalau (6050), Honomau (6051), Nuaulu (6052), Ohia (6054), West Wailuaik (6057), East Wailuaik (6058), Kupuiliu (6059), Waiohe (6060), Paakea (6061),
PETITIONER:
Na Moku Aupuni O Koolau Hui
C/o Native Hawaiian Legal Corp.
1164 Bishop Street
Honolulu, HI 96813

LOCATION MAP: See Figure 1

SUMMARY OF REQUEST:
Staff is requesting that the Commission consider the
recommendations for 19 Petitions to Amend
the Interim Instream Flow Standards (Interim IFS) for streams
contained within the following 16
surface water hydrologic units in the region of east Maui (See
Figure 1).
WAIKAMOÊ (6047): Waikamo Stream, Alo Stream, and Wahinepee
Stream
PUOHOKAMOA (6048): Puohokama Stream
HAIPUENA (6049): Haipuena Stream
PONALAU (6050): Punalau Stream and Koa Stream
HONOMANU (6051): Honomanu Stream
NUAILUA (6052): Nuailua Stream
OHIA (6054): Ohia (Malaian) Stream
WEST WAILUAKI (6057): West Wailuaiki Stream

Staff Submitted December 16, 2009

THE VISITING FOREIGN COMMISSION’S PROPOSED CONTRACT WITH EVIDENCE
OF TRESPASS INTO PATENTED ESTATES PRIVATELY HELD IN PRIVATE
PROBATE PROCEEDINGS, IS / ARE ACCEPTED FOR VALUE OF FULL
LIABILITY ON THE BEHALF OF THE VISITING FOREIGN COMMISSION.

FURTHER TESTIFYING, THAT THE WITNESS HEREFIN IS NOT A 1974
CLASSIFIED “NATIVE HAWAIIAN” WITH RESERVATION OF ORIGINAL
JURISDICTION, WHOSE PATENTED WATERS SHALL AND MUST NOT BE
Dear Commissioners,

I am writing once again on behalf of Hawai‘i Wildlife Fund regarding the legal, ecological, cultural and ethical mandate to return streamflow to East Maui streams.

We testified last year before the Commission on the importance of returning streamflow for numerous reasons including:

a) Water needs of the taro farmers, and other cultural practitioners.

b) Return of the ecological balance of the native stream life and health of the riparian habitat.

c) Return of billions of tons of biomass of aquatic life to the nearshore environment (the loss of which is incalculable to stream, reef and human health and to our economy).

d) The potential for using billions of gallons of treated wastewater to irrigate crops such as sugarcane instead of the stream water.

Today, we wish to suggest that the Commission defer action on its proposed recommendation for status quo and send it back to staff to conduct the analysis required by law for the reasons listed above and the following:

1) The recommendation wrongly shifts the burden to the public. As a public trust resource, the off-stream diverters and the Water Commission bear the burden of protecting and promoting public trust purposes, such as keeping water in the streams for environmental protection and to satisfy Native Hawaiian rights. The recommendation must be returned to the staff to meet that burden.

2) The staff’s recommendation fails to consider and protect traditional and customary Native Hawaiian practices, including the right to gather native stream animals like ‘o’opu, ‘opae, and hiiwa, and the right to use flowing stream waters for
cultural and religious practices. Article 12, section 7 of Hawai‘i’s Constitution and the State Water Code require that IIFSs include the flows necessary to support the exercise of traditional and customary Native Hawaiian practices. The Water Commission must respect and uphold the law.

3) The staff’s recommendation allows HC&S and MDWS to continue wasting water through their leaking systems, while draining East Maui streams dry. The IIFS should incorporate the amount of water saved by stopping this waste and evaluate other methods of obtaining water such as re-use of treated wastewater.

4) The recommendation concedes that HC&S has alternative water sources in the form of ground water wells, but fails to require HC&S to use them. The public trust mandates the Commission to “implement reasonable measures to mitigate the impact of offstream diversions, including the use of alternative sources of water.” Waiahole I, 94 Haw. at 143, 5 P.3d at 455. Again, another alternative source of water resides in the billions of gallons of wastewater being discarded every year into injection wells, which leach into the ocean and pollute nearshore waters.

5) The staff’s recommendation fails to consider and protect traditional and customary Native Hawaiian rights to grow kalo simply because there is no existing farming. If there is no water, there can be no existing use. The ”lack of active taro diversions” cited by the staff does not mean that kuleana rights to grow kalo (also known as appurtenant rights) will not be exercised in the future, especially if water is restored to the streams.

6) The recommendation fails to balance competing uses by keeping the status quo in 18 of 19 streams. Even HC&S’ employees ask the Commission to “share the water”. To truly share the water, staff must restore more flow to the streams.

Sincerely,

Hannah Bernard
President
Hawai‘i Wildlife Fund
79.0 Hawaii State Democratic Party, Kari Luna

December 16, 2009

Re: Water allocation

To the Esteemed Members of the Water Commission:

We understand that the issues of water allocation are complex and controversial. Even within the Democratic Party of Hawaii, we have a wide range of views on these matters.

However, the Democratic Party strongly believes that the continuation of an arrangement that allows water to be shared among important uses is good public policy and best comports with Hawaii’s Constitution and Water Code.

As you will see in the Resolution that the Democratic Party adopted last month, we understand that water is held in trust for the public, and we also recognize that our plantations must be provided the water that they need in order to function, especially in this difficult economic environment. Without the water, the plantation has little chance of surviving.

Mahalo,

[Signature]

Kari Luna
Maui Resident
Hawaii State Democratic Party Vice Chair
Support the Sharing of Water for Agriculture, Communities and the Environment

Whereas: the commercial farming industry has produced our multicultural lifestyle in Hawaii and

Whereas: the last of our great plantations is being threatened and

Whereas: the plantations have produced many of Hawaii's great leaders and

Whereas: all waters are held in trust for the public by the Hawaiian State Constitution

Whereas: That copies of this resolution be sent to the board of
Land and Natural Resources, The Commission on
Water Resources, The Environment and Agricultural Communities and

Therefore Be It Resolved: that the Hawaii Democratic Party Supports the continuation of well paying jobs in Agriculture and the multi-cultural tradition of sharing and support the Sharing of water for Agriculture, Communities and the Environment.

Passed by the State Central Committee, Democratic Party of Hawaii, October 24, 2009.
To all who is involved in this issue 
and to our Taro farmers. My name is 
Samson Biga and I reside on the west 
side of the island in Kauaula Valley. 
I am testifying on behalf of a family 
member and all who is involved in and 
affected by this issue, which is water. 
I would like to start off by saying that 
know that this issue can be resolved by 
both parties involved. To the taro farmers 
I would like to say that what happened 
in the past, when water was taken from 
them, I know is a terrible thing that 
happened. But it has happened 
through the power of the mighty dollar 
and by powerful people at the time. I'd 
like to say I too have worked for the 
Sugar industry at that time was the 
Pioneer mill in Lahaina. It was a way of 
making a living for my family where 
Spouse & Spouses worked for the Co. Let's 
get to the point as it has happened in 
the past, when locals were taken advantage 
of, it will happen again unless the parties 
involved come to a consensus or agreement 
to sit down and find a solution to this 
issue instead of the past having its way. 
Remember in and everyone of us is responsible 
to what happens to our children and future 
generation for the decisions we make now. 
Mahalo, 80.0-2.1 Bless you all.
State Water Commission Hearing
Wednesday, December 16, 2009
Paia Community Center

Testimony in Support of Allocation of Water to HC&S
HS Akamu Way, Wka, HI 96793

My name is Jan Yagi Buen, a lifelong resident of Maui and a former State Senator chairing the Senate Agriculture Committee. My friend Nic Casumpang, Jr. an employee of HC&S, called me from the hospital bed yesterday and asked that I speak on his behalf to ask the Commission to allocate enough water for their sugar growing operation at HC&S. I too am in support of sufficient water be awarded to HC&S. The 800 employees, their families and the state of Hawaii would suffer irreparable harm should the company close. The state of Hawaii would be in more financial straits with the loss of revenue in form of taxes from the company, other businesses affected and its employees. We cannot comprehend the magnitude of damage and the rippling effects it would have throughout the state, especially in these difficult times.

I also ask that the State Water Commission make a ruling that other small farmers be given adequate supply of water for their taro farming and other agricultural kuleana farmers as well as more water put back in the streams.

More importantly, I ask this body to seriously have EMI and the state to provide more data on loss of water from disrepair, seepage or sink holes and major leaks from the nearly 140 year old transmission system. The company has to be responsible to its employees and themselves by fixing their water system. This is a very simple solution that is a win/win which will benefit HC&S, agricultural farmers, kuleana farmers and the stream. If indeed there are seepages and major leaks in the transmission system, and these problems fixed, there would be an over abundance of water for all farmers. I would like to ask the Commission to have EMI and the state to do the research and make the necessary repairs so that HC&S’s allocation will not be reduced.
I am the attorney for Na Moku Aupuni O Ko’olau Hui, Beatrice Kekahuna and Marjorie Wallert. The Hui’s membership is focused primarily on the cultural landscape of Keanae-Wailua’ai (as designated by the County of Maui). Ms. Kekahuna and Ms. Wallert are elderly Hawaiian cousins who have lived their entire lives along Honopou Stream. All of my clients are active taro farmers, whose extended ohana have continued the traditions of their ancestors cultivating kalo and relying on free-flowing streams that provides them both irrigation water and sustenance from the gathering of o’opu, liliiwai, and opae from various streams and fish, crab, and other marine foods nurtured by estuarine waters fed by those streams. The Commission should defer any action on these petitions because of the fatal inadequacies of the Staff Submittal.

My clients are the petitioners who triggered this action meeting with the filing of petitions to set interim instream flow standards for 27 streams along the East Maui coastline. They filed these petitions to enforce their constitutionally protected traditional taro growing, gathering, and fishing practices. The Hawai‘i Constitution\(^1\) and the water code explicitly recognize their rights and imposes a duty on this Commission to act affirmatively and timely to protect them. Moreover, the Constitution also expressively confirms the state’s duty to preserve the cultural traditions of Hawaiians.\(^2\)

**Historic Background.** The struggle of my clients, and those like them, to preserve their ability to practice their cultural traditions which are based on free-flowing streams is long and storied. At the inception of what is now the East Maui Irrigation Company’s ditch system in 1876, their ancestors strongly opposed the proposal to tap the 27 streams at issue before this

---

1. Haw. Const., Art. XI, § 7 provides:

   The State has an obligation to protect, control and regulate the use of Hawai‘i’s water resources for the benefit of its people. 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 apportionment rights and existing correlative and riparian uses and establish procedures for regulating all uses of Hawai‘i’s water resources.

2. Haw. Const., Article XII, § 7 provides:

   The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by abupua’a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Island prior to 1778, subject to the right of the State to regulate such rights.
Commission. In return, the Kingdom explicitly required that the proposed diversions by Alexander and Baldwin (A&B) be subject to the following condition:

"... existing rights of present tenants of said lands or occupiers along said streams shall in no wise be lessened or affected injuriously by reasons of anything herein before granted or conveyed, ..."

See, 1876 Roya lease to Alexander and Baldwin, attached as Exhibit A to my earlier testimony to you on October 15, 2009.

Keep in mind that the ditch is only possible with the consent of the state government, which leased or permitted thousands of acres of former Crown lands belonging to the illegally overthrown Kingdom. As a result, over 75 percent of the water flowing to A&B’s subsidiary, Hawaiian Commercial and Sugar, in central Maui is totally dependent on the Board of Land and Natural Resources issuing permits or leases to allow the massive diversion of up to 450 million gallons per day. The Staff submitted documents that, contrary to the 160 mgd average diversion HC&S claims, the record demonstrates that between 2003 and 2009, HC&S actually used 201 mgd for its irrigation operations—a 22% difference with what has been publicly reported previously.

The Territory of Hawai‘i and the State of Hawai‘i continued to impose the provision to assure protection of downstream taro farmer rights to water, in various forms, in subsequent renewals of the initial water lease to A&B. This provision reflects the governing rights of East Maui residents who hold constitutional rights to gather from these 19 streams for subsistence, cultural or religious purposes as guaranteed by the Hawai‘i Constitution, Art. XII, § 7. However, over time, A&B/HC&S have ignored these rights, while progressively increasing efficiency of the diversion works installed and constructed and maintained by A&B’s subsidiary, East Maui Irrigation Company (EMI).

Procedural Background. On May 14, 2001, A&B filed a request for four revocable permits or long-term leases for portions of State government (ceded, former Crown land) conservation land within the Ko‘olaup Forest Reserve and the Hanawai Natural Area Reserve identified as the Keanee, Nahiku, Homonuha, and Hualo areas. A&B thereby specifically requested the issuance of revocable permits or long-term licenses to allow for the “right, privilege and authority to enter and go upon the above-described areas for the purpose of developing, diverting, transporting and using government-owned waters.” (Emphasis added). By approving these permits or issuing long-term licenses, the BLNR authorized A&B to transfer water outside the watershed of origin in an area that the Commission on Water Resource

Management has not designated a water management area pursuant to HRS 174C-48 and without regard for superior rights to this water or a demonstration by A&B that these diversions are not adversely impacting the appurtenant water rights and other constitutionally protected rights to gather food products from these streams in the tradition and custom of Hawaiians. Accordingly, my clients challenged the further issuance of any permits or leases to A&B.

Contemporaneously with this request, my clients also filed the petitions to set interim instream flow standards for 27 East Maui streams. On September 25, 2008, the CWRM set IIFS for 8 streams located closest to the residences of the petitioners, and ordered the CWRM staff to report back on the remaining 19 streams now before you.

Applicable Rights. The Hawai‘i Supreme Court requires ALL public agencies, including the CWRM, to:

1. Investigate and identify any existing traditional and customary practices in the subject area which may be affected adversely by its decision
2. Assess the impact of its decision on any identified practices
3. Take reasonable steps to protect those practices

Kapa‘aua v. LUC, 94 Haw. 31, 52; 7 P.3d 1068, 1089 (2000). This duty is based on a constitutional duty to protect such traditions and customs as a matter of right. Haw. Const., Art. XII, sec. 7.

Moreover, in 1904, HC&S helped establish the applicable law on water rights that should guide your decision. This law provides that “[t]he burden of demonstrating that any transfer of water is not injurious to the rights of others rests wholly upon those seeking the transfer. Hawaiian Commercial & Sugar Co. v. Wailuku Sugar Co., 15 Haw. 675, 694 (1904).” Robinson v. Ariyoshi, 65 Haw. 641, 649 n. 8 (1982) ("Robinson") (emphasis added). More specifically, “In order to obtain any ultimate judicial sanction to a transfer of water away from the lands of ancient application, the holder of a water right would have to 1) have defined all the potentially affected interests in a watercourse, and 2) have demonstrated that no aspect of these rights would be detrimentally affected.” Id. (Emphasis added). As a result of the ruling in Hawaiian Commercial & Sugar Company (“HC&S”), A&B’s sugar operation on Maui, successfully legally stopped Wailuku Sugar Company from making illegal out of watershed stream flow diversions from the Wailuku Stream.

In its Waiakolu proceedings, this Commission concluded that in assessing the need to amend IIFS, it effectively prescribes a "higher level of scrutiny" for private commercial uses. In
In Re Water Use Permit Applications, 94 Haw. 97, 142, 9 P.3d 409, 454 (2000) (“Waiahole”). This Commission must invoke a “higher level of scrutiny” for private commercial uses of water like those of HC&S. Id. In doing so, it must demand JUSTIFICATION from the diverter trying to justify its use in light of the public trust over water resources. Id. As the Hawai‘i Supreme Court noted:

[I]f the public trust is to retain any meaning and effect, it must recognize enduring public rights in trust resources separate from, and superior to, the prevailing private interests in the resources at any given time. See Robinson, 65 Haw. at 677, 658 P.2d at 312 (“[U]nderlying every private diversion and application there is, as there always has been, a superior public interest in this natural bounty.”).

Id. at 138, 9 P.3d at 450 (emphasis added). See, note 3.

Economics and private commercial uses of water do not trump the protection afforded under the public trust doctrine:

Although its purpose has evolved over time, the public trust has never been understood to safeguard rights of exclusive use for private commercial gain.... We hold that, while the state water resources trust acknowledges that private use for ‘economic development’ may produce important public benefits and that such benefits must figure into any balancing of competing interests in water, it stops short of embracing private commercial use as a protected ‘trust purpose.’... [I]f the public trust is to retain any meaning and effect, it must recognize enduring public rights in trust resources separate from, and superior to, the prevailing private interests in the resources at any given time.

Waiahole, 94 Haw. at 138, 9 P.3d at 450 (emphasis added).

As in Waiahole, this Commission might be tempted to be swayed by commercial interests, but the Supreme Court has corrected past mistakes related to water resources, in favor of restoring stream flow whenever required to abide by the need to protect the resource from over use or past improvident use.3 Instead, it rejected any notion of vested rights to water resources:

Under the public trust, the state has both the authority and duty to preserve the rights of present and future generations in the waters of the state... The continuing authority of the state over its water resources precludes any grant or assertion of vested rights to use water to the detriment of public trust purposes. This authority empowers the state to resist prior diversions and allocations, even those made with due consideration of their effect on the public trust...

Id. at 141, 9 P.3d at 453. (Emphasis added.) (Internal citations omitted).

It also signaled no reluctance to carefully scrutinizing any administrative decision that clashes with respect for the public trust doctrine:

Specifically, the public trust compels the state duty to consider the cumulative impact of existing and proposed diversions on trust purposes and to implement reasonable measures to mitigate this impact, including the use of alternative sources.... The public trust... is a state constitutional doctrine. As with other state constitutional guarantees, the ultimate authority to interpret and defend the public trust in Hawai‘i rests with the courts of this state... This is not to say that this court will supplant its judgment for that of the legislature or agency. However, it does mean that this court will take a “close look” at the action to determine if it complies with the public trust doctrine and it will not act merely as a rubber stamp for agency or legislative action.

Id. at 143-144, 9 P.3d at 455-456. (Emphases added.)

The Supreme Court in Waiahole leaves no doubt that the BLNR and the CWRM must critically review A& B’s request pursuant to the public trust doctrine and cannot “rubber stamp” A&B’s request to transfer water outside the watershed of origin without assigning these private companies the appropriate burden of squaring those transfers with superior rights and the public trust doctrine. Id.

Furthermore, the diversions are a “transfer of water” outside the watershed of origin. As such, those parties’ proposing and/or advocating the continued transfer must first identify affected interests in each watercourse, and bear the burden of demonstrating that no aspect of all of these interests would be detrimentally affected by the proposed diversions. Robinson, 63 Haw. 641, 649, n. 8 (1982) (emphasis added). Requiring A&B and/or the State to carry this burden of proof prior to authorizing any diversion is logical, reasonable, justified, and most importantly, required, since neither has the inherent enforceable right to transmit water outside its watershed of origin. Id. at 648. (Emphasis added). For too long, the state has shirked this duty.

Application of Law to A&B/HC&S Diversions.

Missing Kapa‘akai analysis. First of all, the CWRM staff submittal completely ignores Kapa‘akai. It regales its analysis of traditional and customary practices to a mere sentence, acknowledging NHLC submissions, but reacting by deeming that no taro growing exists along 18 of 19 streams. In the case of Makapipi, it acknowledges a claim of taro growing but discounts that it currently exists. The current nonexistence of taro growing says nothing about the past practices, or the potential to restore such practices in the future, which the

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Post-Mahalo water rights decisions ignored this duty, treating public water resources as a commodity reducible to absolute private ownership, such that “no limitation... existed or was supposed to exist to [the owner’s] power to use... the waters as he saw fit... Based on founding principles of the ancient Hawaiian system and present necessity, this court subsequently reasserted the dormant public interest in the equitable and maximum beneficial allocation of water resources...”

Id. at 139, 3 P.2d at 451. (Internal citations omitted).
Commission must consider. There is no mention of traditional and customary practices, or the effects of continued diversions from these 19 streams on these practices, in complete disregard of the twenty two declarations submitted by cultural practitioners at the April 10, 2008 CWRM Public Fact Gathering Meeting.

This cursory treatment of major constitutional rights is inimical to the Kapa'akai analysis mandated by the Court. It makes a mockery of the reasoning behind this mandate and reduces it to an absurdity. There is no attempt to investigate and inventory protected practices that may exist in the East Maui area affected by diversions. The CWRM staff has not assessed what impact the continued diversions will have on the cultural practices of which it has been made aware. Without performing either of the initial two steps of the Kapa'akai analysis, the CWRM has done nothing to reasonably protect the cultural practices that do or would exist, but for the diversions.

Missing Legal Burden Analysis. As to the applicable common law rule on out of watershed diversions/transfers, and the Waiahole Court’s discussion the public trust doctrine as applied to diversions, the CWRM staff appears to rely heavily if not exclusively on the economic impact of restoring stream flow on the private commercial interests of HC&S’ sugar plantation operations and employment. CWRM staff submitted 11. Moreover, it appears to rely on the absence of local residents in 16 of the 19 streams to assert that only “minimal downstream uses exist,” citing to no surveys or other substantiation. Id. Rather, it formally relies on the following statement:

Over the years that HC&S has been in operation, the Maui Community and the economy have become dependent on the existence and viability of HC&S. The tourism industry relies on showcasing Maui as a lush green tropical paradise, part of which stems from visitors appeal to the vast open spaces of the plantation.

CWRM staff follows this outrageous statement with a general discussion on the impacts of stream restoration on HC&S employment, generation of renewable energy, higher reliance on groundwater sources, and suppliers which has grown to rely on sugar plantation operations. It goes to the extent of extrapolating possible negative impacts on DHHL revenues from loss of sugar land leases and the landscape and tourism industries in general. In this discussion, contrary to prevailing law, economics appears to enjoy a superior position to enduring public rights in trust resources separate from, and superior to, the prevailing private interests in the resources at any given time.” Waiahole, 94 Haw. at 138, 9 P.3d at 450 (emphasis added).

Finally, dispensing with any affirmative investigation or identification of the traditions and customs negatively impacted, it proposes to place the burden on cultural practitioners who might be negatively affected. If the adaptive management strategy approach is adopted, potential practitioners would have to record and document their harms, should they occur, to substantiate any adjustments that CWRM may make over the course of the next year. CWRM Staff Submittal 55, 60.

The heavy concentration of the impacts of restoration on private commercial interests reveals the complete misinterpretation of applicable trust law on the deference owed to private commercial entities utilizing water from state ceded lands. The state is literally refusing “to revisit prior diversions and allocations, even those made with due consideration of their effect on the public trust...” 94 Haw. at 141, 9 P.3d at 453. Instead, it is flatly accepting the status quo without any regard for public trust principles.

Na Moku, et al. need not, at this point, establish their entitlement to water from the diverted streams or that those entitlements are or will be adversely impacted by the proposed diversions. It has already filed declarations meeting the threshold requirement to alert the CWRM that traditions and customs exist or would continue or be reestablished, but for the EMI diversions. Under the applicable common law, to justify any diversion, A&B and/or the State of Hawaii must first identify the universe of rights potentially affected by the proposed action. Robinson makes clear that before any proposed transfer of water outside the watershed of origin; whether for an hour, a day, a week, a month, or thirty years, may be authorized, “those seeking the transfer” must demonstrate that the “transfer of water [is] not injurious to the rights of others.” Robinson, 65 Haw. 641, 649 n. 1 (1982).

A&B’s diversions of water from Crown Lands continuously and detrimentally affect and violate Na Moku, et al.’s and others’ constitutionally protected rights. Na Moku has already documented the traditional and practices which could be restored should stream restorations be ordered. The applicable common law and public trust doctrine clearly instruct that the burden of demonstrating the transfers of water at issue here are not injurious to these rights rests wholly upon A&B as the entity that seeks to divert/transfer such water and/or the State of Hawaii as the entity seeking to authorize them. As noted in Waiahole, the burden of the State of Hawaii ultimately falls upon BLNR, which has made no such showing. Waiahole, 94 Haw. at 142, 9 P.3d at 454.

Neither the State nor A&B has defined all the potentially affected interests in the streams it intends to take water from. Id. As Robinson instructs, [a]s long as there remained unidentified or potentially affected interests in a watercourse no transfer of water could therefore be secure.” Id. The First Circuit Court’s October 10, 2003 Order already confirmed that any lease issued absent a before-the-fact determination of superior interests would violate the common law. See, Exhibit B, at 4-5, attached to my October 15, 2009 testimony. As noted, Robinson confirms that this precondition also applies to the issuance of a revocable permit since it requires that the burden be carried before any transfer of water; whether for an hour, a day, a week, or longer, is authorized. Robinson, 65 Haw. 641, 649, n. 8. This Commission should affirmatively act consistent with both the applicable common law and its public trust duties absent this inquiry.

Once A&B and/or the State of Hawaii sufficiently identify each and every potential interest affected, it/they must then ultimately demonstrate that no aspect of each and every potentially affected interest will be detrimentally affected by the proposed transfer. Na Moku, et al., has already placed on record before the BLNR its extensive pattern of resource use from taro growing, fishing, and gathering practices. See, e.g., Petitioners’ Direct Expert Testimony of Davianna Pomaika’i McGregor, PhD, attached as Exhibit C to my October 15, 2009 testimony.

Unless and until A&B/HC&S or the State meets its burden, the clearly injured superior rights asserted by Na Moku, et al. must prevail over A&B’s unsanctioned diversions/transfers to
support commercial activity. Certainly, A&B must not be allowed to continue to avoid and escape the consequences of the same law that it previously successfully relied upon to prevent out-of-watershed diversions from Waikuku River. “The burden is upon it, if it desires a diversion to new lands, to make it without injury to others and to prove that it has been made if at all without such injury.” 4 Hawai’i Commercial & Sugar Company v. Waikuku Sugar Company, 15 Haw. 675, 692 (1904) (enjoining issuance restraining Waikuku Sugar Company from diverting any water from Waikuku Stream during certain times and from certain ditches).

Unless and until this burden is met by the State or A&B/HC&S, the continuing out-of-watershed diversions/transfers of East Maui stream water by A&B require that the State and its respective agencies, including the CWRM, as the trustees of these public trust resources, should take no action to allow it to occur. Robinson, 65 Haw. at 650 (leaving “actual enforcement of these limitations to appropriate subsequent actions brought by the parties, including the State”).

Unless and until the burden placed on it and/or A&B is met, the CWRM should order A&B/HC&S/EMI to immediately release a sufficient amount of stream flow into each and every stream within which Na Moku, et al. and others’ exercise their superior constitutional rights to continue the traditional and customary subsistence gathering and fishing practices. These practices require free-flowing streams to continue.

**Missing Alternatives Analysis.** The CWRM staff fails to rationally discuss alternatives to the diversions. For example, there is no analysis on how reduction would negatively impact HC&S. The CWRM Staff already calculated the actual need of HC&S based on an IWEKEDSS model estimation that HC&S’ actual need is 1,400 gpd per acre in the winter and 6,000 gpd per acre in the summer. CWRM Staff submitted (September 24, 2008) at 9. Based on EMI’s admitted use of 5,000 gpd per acre during wet months and 10,000 gpd per acre in wet months, your own staff calculated that HC&S could surrender 70% of its diverted water during winter months and 40% during dry summer months without negatively affecting reasonable irrigation needs of the HC&S plantation. Id.

However, it should be noted that, in actuality, Lee Jakeway, then director of irrigation affirmed under sworn testimony before the BLNR that HC&S uses 17,000 gpd per acre during wet winter months and 34,000 gpd per acre during dry summer months. Therefore, if these figures were utilized in the analysis of the CWRM staff above, the savings would be far higher – 91.4% and 82.4%.

The same CWRM staff submitted affirms that HC&S’ actual use from East Maui diversions over the period from 2003 to 2008 was 201 mgd on average (p. 11). That actual use represent a 22% increase in what HC&S has publicly claimed it used from its EMI ditch system.

The staff does not explain why there is such a huge disparity in previously reported HC&S claims of use and actual use. The State has never forced A&B/HC&S/EMI to account for its water usage to determine its reasonableness.

Furthermore, and pursuant to the public trust doctrine, Na Moku, et al.’s asserted and clearly unchallenged superior rights, as noted in the declarations summary in your Instream Flow Assessment Reports, must take precedence over, at best, the private for-profit uses of A&B. Waalholy, 94 Haw. at 142, 9 P.3d at 454 (holding that any balancing between public and private purposes begins with a presumption in favor of public use, access and enjoyment) (emphasis added).

Furthermore, and with respect to the rights asserted in the attached declarations, even in the absence of scientific certainty, the public trust’s precautionary principle mandates that a sufficient amount of stream flow be returned to the streams upon which these superior rights rely:

Where scientific evidence is preliminary and not yet conclusive regarding management of fresh water resources which are part of the public trust, it is prudent to adopt ‘precautionary principles’ in protecting the resource. That is, where there are present or potential threats of serious damage, lack of full scientific certainty should not be a basis for postponing effective measures to prevent environmental degradation… In addition, where uncertainty exists, a trustee’s duty to protect the resource mitigates in favor of choosing presumptions that also protect the resource… [A]t a minimum, the absence of firm scientific proof should not tie the [State’s] hands in adopting reasonable measures designed to further the public interest.

So defined, the precautionary principle simply restates the [State’s] duties under the constitution… Indeed, the lack of full scientific certainty does not extinguish the presumption in favor of public trust purposes or vitiate the [State’s] affirmative duty to protect such purposes wherever feasible.

Id. at 154-155, 9 P.3d at 466-67. With the information your staff has generated from the data and information my clients have provided in connection with these petitions, the CWRM has more than enough of a basis to order the restoration of stream flow. Simultaneously, neither A&B nor the BLNR can show that no harm is coming to downstream users of water, especially those seeking to restore habitats for traditional and customary fishing and gathering.

**Long Term Viability of HC&S.** Contrary to the claims of HC&S, water is not the critical element in its longer term economic viability. The closing of every other sugar plantation in Hawai‘i is indicative of a more complex financial reason: it is doubtful that sugar plantation can be sustained in Hawai‘i due to lower costs in other areas of the world. The future of HC&S operations is NOT strictly dependent on water, however much it actually needed for sugar operations, being available from East Maui. The availability of sugar price supports is probably a greater factor in HC&S’ future viability as a business operation.
In any case, the agribusiness operations of A&B, of which HC&S is only a part, generated only $200,000 in profit in 2007. HC&S generated just 6% of A&B’s 2008 revenues, while accounting for $13 million in losses last year. Fortunately for A&B, it offset HC&S losses by $268 million in profits from its real estate and shipping ventures. In 2009, HC&S is likely to lose another $27 million. Thus, HC&S not only constitutes just an extremely minor, and losing, part of A&B operations; it largely accounts for all of its financial losses for the past two years. See chart from 2008 A&B Annual Report, attached at Exhibit F to my October 15, 2009 testimony. The future of HC&S is already very bleak independent of any water it claims it needs to survive.

**Missing Cumulative Impact Analysis.** Also, none of this discussion focused on an assessment of “the cumulative impact of existing and proposed diversions on trust purposes and to implement reasonable measures to mitigate this impact, including the use of alternative sources,” Waialae I, 94 Haw. at 143-144, 9 P.3d at 455-456. In essence, it flips the burden and focus of the required analysis on its head, disregarding the governing law. There is simply no serious discussion, if any, on the cumulative impact of these diversions on the ability of cultural practitioners to continue and/or restore constitutionally protected subsistence gathering and fishing practices or to restore taro lo‘i long left untended due to the diversions of naturally flowing stream water.

**Conclusion.** The CWRM needs to perform the required Kapu‘akai legal analysis before proceeding with any refusal to amend IIFS to the 19 affected streams. Furthermore, in the absence of any showing by the BLNR or A&B/HC&S that its diversions are causing no harm to downstream users of stream water in the 27 streams, the overwhelming precedent cited above clearly mandates that the State, at a minimum, require A&B to return a sufficient amount of water to streams to restore habitats to support the cultural practices of my clients and others. The economic and financial interests at stake are secondary, in fact, they appear not to depend on the provision of water in the long term. The cumulative effects of diversion on stream fauna and flora deserve appropriate and adequate protection under the Constitution, Water Code and related case law. The Commission should definitively resolve any pending complaint of waste. Otherwise, the State will continue to violate the applicable rule of law and remains in breach of its public trust duties.

Furthermore, the CWRM must couple any decision to implement an IIFS determination with adequate resources and a plan to address the specific needs of taro farmers and cultural practitioners, with equipment and staff to properly monitor appropriate criteria. The Commission should defer any action on these petitions because of the fatal inadequacies of the Staff Submittal.
October 22, 2009

State Commission on Water Resource Management
Laura H. Thielen, Chairperson
P.O. Box 621
Honolulu, Hawaii 96809

Subject: Instream Flow Standard Assessment Report
   Hydrologic Units 6064 Hanawi Stream and 6065 Makapipi Stream
   * Kahiwa Well

Aloha Chairperson Thielen, Members of the Commission and Staff,

The Hana Community Association was an intervener in the contested case hearing before the Commission on Water Resource Management (MA-CC-91-1) regarding the application for pump installation at Kahiwa Well in Nahiku. The thirty seven page "Finding of Fact, Conclusions of Law, and Decision and Order" is attached as an important reference. Impacts upon Hanawi Stream, Makapipi Stream and the unnamed stream between Hanawi and Makapipi Streams were the core issues of the case.

Since the granting of the pumping permit for Kahiwa Well, NEW ISSUES, CONDITIONS, and CONCERNS have arisen which need to be addressed as part of the current instream flow standards process. The new issues, conditions and concerns are important to address in determining the instream flow standards for the subject hydrologic units in association with any future pumping and monitoring of Kahiwa Well.

The Hana Community Association Board of Directors requests a meeting in Nahiku, Keanae or Hana with the commission and/or staff members to review Maui Land and Pineapple Company compliance or non compliance with the "Decision and Order" dated October 2, 1991. We would like the meeting to include the Hana Community Association (intervener), Maui Land and Pineapple Company (applicant), Ned Iliahi Goodness (intervener), the Nahiku Community Association (actively concerned with issues), Na Yoku Aupuni O Koolau Hui (actively concerned with issues), Dr. Pang (actively concerned with issues) and other interested parties. We offer to help make arrangements and host the meeting. We hope the meeting will be an honest, constructive and collaborative means to address the issues together.

Proposed agenda:
* Review of the Decision and Order for compliance or non compliance.

* Discussion of new issues, conditions and concerns. This topic should include the recent drying up of several important springs and streams south of Makapipi Stream and Kukiwa Well. These springs and streams were not addressed during the contested case hearing. Today, many longtime residents think there is a connection between the de-watering of Makapipi Stream and the loss of spring and stream flow to the south. Any future pumping of Kukiwa well could only make the situation worse. Maui Land and Pineapple Co. have stated the company has pumped Kukiwa Well on an intermittent basis. However, Maui Land and Pineapple representative Wes Nohara stated at your October 15, 2009, meeting in Paia that the company has changed its plans about moving its pineapple operations to West Maui. That could have an impact on the future use of Kukiwa well and could impact the surrounding springs and streams.

* Discussion of a methodology to include the community in future monitoring of stream conditions and improvement of the watershed.

* Discussion of possible restoration of Kukiwa, Makapipi and Hanawi Streams to their natural state.

* The Betistil Erothers well. The use of this well has not been properly monitored. The well may be in the same perched aquifer as Kukiwa Well and could certainly add to the threat of pumping Kukiwa Well on Big Springs.

* Land title issues.

The Hawaii Stream Assessment, accepted by the Commission on Water Resource Management, identifies seven streams in the state with the most outstanding aquatic and riparian values which should receive full watershed protection from the mountains to the ocean as “Kapu Streams”. Discussion of full protection of Makapipi Stream, Hanawi Stream and the unnamed stream would be a constructive way to explore the “kapu” issues. It appears the watershed is “dying” and losing its capacity to sustain itself at historic levels.

Mahalo,

John Blumer-Buell, Corresponding Secretary
on behalf of the Hana Community Association Board of Directors

Tony Angelini, Lehua Cosma, Suzette Cossey,
Lisa Hamilton, Judy Kinser, Guy Lay

cc: Maui Land and Pineapple Company, Ned Iliahi Goodness, the Nahiku Community Association, Na Moku Aupuni O Koolau Hui, Dr. Pang, Skippy Young, Frank James Oliveira

83.0-3

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**East Maui’s Public Trust Water: A Financial Exercise**

By JOHN BLUMER-BUELL

Here’s a question and “food for thought” – what’s the estimated monetary value of the public trust water taken from East Maui streams and watersheds by private corporations over the last twenty years? HC & S (Hawaiian Commercial and Skirg) and EMI (East Maui Irrigation), private corporations that took that water, have illegally deprived kanaka maoli of the right to live their lives based on cultural traditions, including the growing of kalo.

For your consideration:

- The Hawaii State Constitution protects fresh water as a public trust resource that belongs to everyone, including future generations.
- In 1876, construction of the system of ditches and tunnels from East Maui streams was commenced; these ditches and tunnels divert an average of one hundred sixty million gallons of water per day (mgd) away from East Maui streams.
- Although the current average daily water delivery through this system is one hundred sixty mgd, it is capable of capturing and redirecting as much as four hundred forty-five mgd during storm events.
- One hundred sixty million gallons per day times three hundred sixty-five days per year equals fifty-eight billion, four hundred million gallons per year ($58,400,000,000).
- According to the County of Maui Department of Water, the current rate charged for agricultural water is one dollar per thousand gallons, after initial base charges.
- HC & S and EMI pay about a FIFTH OF A CENT per thousand gallons from the water license areas of Honomanu, Keanae, Nahiku and Huelo.
- Divide $58,400,000,000 by one thousand to get the number of “thousand gallon units”. That number is fifty-eight million, four hundred thousand.
- Multiply that by one dollar; the total is fifty-eight million four hundred thousand dollars per year.
- Multiply that by twenty, the number of years we are considering.

ANSWER: The estimated monetary value of the Public Trust water taken from East Maui streams and watersheds by the private corporations HC & S and EMI over the past twenty years, while illegally depriving kanaka maoli of the right to live their lives based on cultural traditions, including the growing of kalo, is ONE BILLION ONE HUNDRED SIXTY EIGHT MILLION DOLLARS!

Isn’t it time for a truly public discussion and constructive dialogue regarding these important financial issues and the impacts upon the kanaka maoli and on our environment?

Could some of the revenues be used to build water storage for upcountry farmers and residents, or to improve our children’s education, or to take care of the rapidly deteriorating watersheds?

What is the real value of water to our lives?

Mahalo for your consideration.
84.0 Onipaa Na Hui Kalo, Gwen Kim
QUEEN LILI'UOKALANI CHILDREN'S CENTER
LILI'UOKALANI TRUST

Laura Thielens, Director
Department of Land and Natural Resources
Commission on Water Resource Management
P.O. Box 621
Honolulu, HI 96809

Dear Ms. Thielens,

Re: Support for Na Moku Aupuni O Ko'olau Hui

Onipa'a Na Hui Kalo (ONHK) supports Na Moku Aupuni O Ko'olau Hui request to restore water to 19 East Maui streams. Over the past 130 years the East Maui Irrigation Company has been progressively diverting water and we ask that this commission make a determination that East Maui Irrigation Company put substantially more water back into the 19 streams of this case.

Onipa'a Na Hui Kalo became a statewide project in 1996. With a membership today of close to 300 members of kalo farmers, researchers and friends of kalo farmers, the group has coordinated participation in community and statewide events that benefit children of Hawaiian ancestry by restoring lo'i, clearing awa'iwai and planting kalo in Hawaii, Oahu, Kauai, Molokai and Maui.

ONHK main objective is to strengthen Hawaiian children and families through cultural venues of lo'i kalo. Every year, it provides inter-generational activities that enhance cultural awareness, sense of pride for heritage and place, thereby building a stronger family and community. In addition, it supports building lo'i on every island and in every ahupe'a, so that families can effectively sustain themselves. We understand the many issues that impact kalo with water, especially the lack of water being in the forefront.

We have concerns regarding water diversion as follows:

- The Commission has an affirmative duty under the Hawaii Constitution and the State Water Code to protect and promote in-stream public trust uses. Water is a public trust resource. Water should not be hoarded for private use as it is being done by various companies in Maui. By suggesting that 500,000 gallons over 15 streams is enough, the commission is knowingly ignoring the substantial data available to this case and omitting its knowledge of Public Trust Doctrine Law.

- Water dumping is wasteful and not pono. Kalo farmers have waited long enough. ONHK is concerned that though HC&S is growing substantially less acreage of sugar the water has not been cut back.

We support the restoration of water as outlined below:

- The diversions have had a dramatic and destructive affect on 'o'opu, 'opoe, hiihiwai, and other foods like liimu and fish along this coastline, therefore; families who once gathered these foods are no longer able to find this rich resource. With the restoration we will once again see these resources return and flourish.

- ONHK strongly supports restored stream flow so that Maui kalo farmers can once again exercise their rights to grow kalo and feed their families, and community. (The State Constitution and Water Code protect appurtenant (kupe'a) rights and traditional and customary Native Hawaiian practices. Haw. Const., art. XII, § 7; Haw. Rev. Stat. §§ 174C-2(c), -63, and -101(c-d)). Decades of stream diversions by plantation agriculture have deprived small family farmers and taro farmers who depend on stream water to sustain their families, communities, and way of life. Restored stream flows will allow such agriculture -- the "culture" in agriculture -- to flourish.

- ONHK acknowledges that Hawaiian's anciently used stream flow in their cultural and religious practices. Their rights and traditional and customary Native practices are being ignored and disregarded.

The proposed allocation of water that is being supported by the Committee is unconscionable. Rights and requests of kalo farmers need to be given fair consideration. I am forwarding this testimony on behalf of members of ONHK.

Gwen Kim, ACSW
Winward Unit Manager

cc. Native Hawaiian Legal Corporation
Na Moku Aupuni O Ko'olau Hui