
Compilation of Public Review Comments

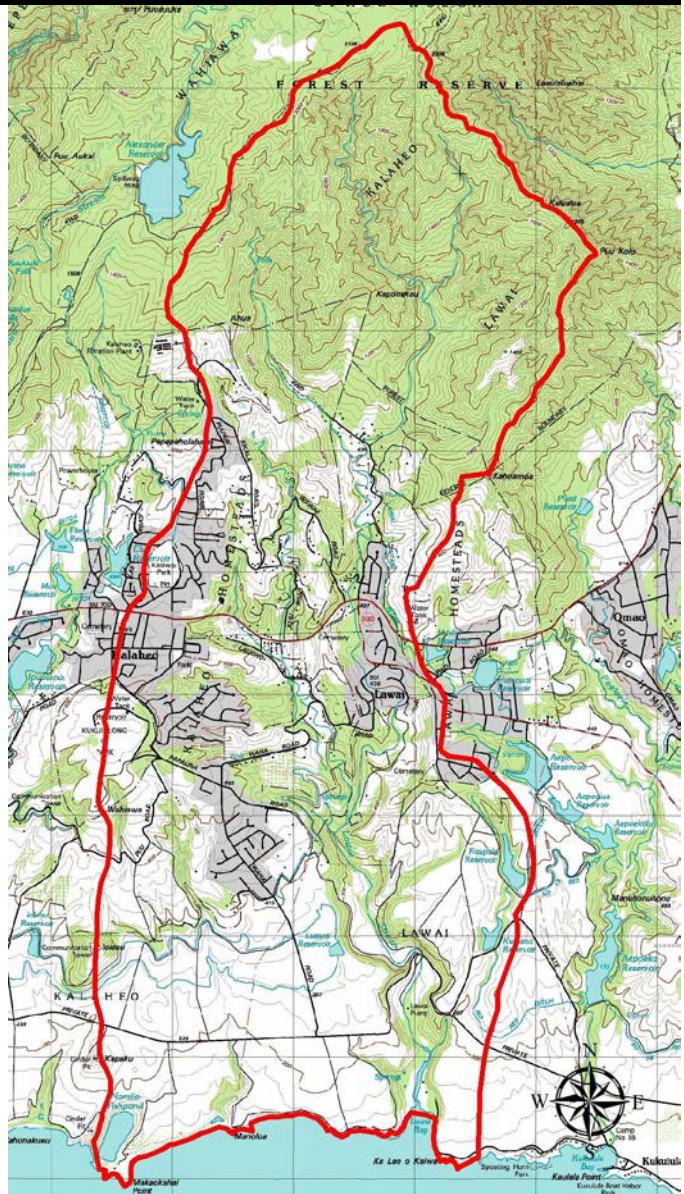
Hydrologic Units:

Lāwaʻi (2051)

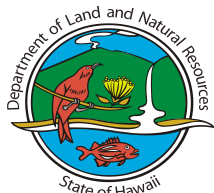
Island of Kauaʻi

January 2021

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



INTRODUCTION

This document is a compilation of all comments submitted to the Commission on Water Resource Management (Commission) on the Instream Flow Standard Assessment Report for the Hydrologic Unit of Lāwa'i (2050).

All comments have been separated into individual sections according to the submitting organization or individual, and the date of submission. Comments are listed in the order they were received by the Commission.

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**1.0 Oral Testimony from October 28, 2019 Public
Fact Gathering Meeting**

Transcript of Oral Testimony
Public Fact Gathering Meeting
Līhu‘e Civic Center, Moikeha Conference Room
October 28, 2019

1.1 Joseph Kekaulike Kamai

The lands and the waters, I used to go up there and we used to do eradication for the plantation. The rivers, my kids get the chance to play in the rivers. If you go back up there right now, the next generation lost it. We used to be able to catch ‘o‘opu, prawns, scoop ‘ōpae. Cannot do that now. The water is so low. When it comes down, the Lāwa‘i swimming hole, the kids not going to be able to jump off the falls like they used to because the thing is so shallow they bust their head open. And then when you going down toward Lāwa‘i General Store, before the water used to come almost to the top of the boulders in the back. Now you lucky if you see little ponds in the waterway. And that was because of a diversion that they did six years ago. We actually had three of us that were taking care of Kalāheo, Lāwa‘i, and Hanapēpē. We noticed that the Lāwa‘i water starting getting lower and lower, then my friends went up to the top to go check. They saw these guys inside there with machinery building. They were building their own wall. And that’s where you get that section where you guys see the pipe coming out of the wall. That kills a lot of the water that was coming down and was producing down below. Farmers can’t even get their water because of that. They end up stopping, because why? There’s no water. But, you know, we have state and federal laws to protect that water for the people. If it’s right for us, it should be right for those people with their money. T’s not fair that they have a choice of taking the water for 65 years and not giving back to the land. This is going even through from the east side all the way down. None of this is fair. Our children, our grandchildren, don’t have the chance, right? The don’t have the chance to have the fun that we had up there. And the reason why it turned this way, because my uncle is sitting right there. My aunty is sitting behind him. It’s not right. It’s not fair. I regret not having the chance to take my grandchildren up there to enjoy themselves. You know? And then when my great grandchildren come, they not going to be able to see anything like that. I’m not thinking about myself. I’m thinking about the landowners, I’m thinking about the future. You know? Please, if you guys got a heart, think of what they doing to our land. They’re raping it. They’re stealing everything that we have. It’s not fair for us. It’s not fair for the kids. I used to go up there and I can feel the mana in the land. I go up there in the evenings to do my eradication. Ho, brah, score. Hit one pig here, hit one bigger pig. I can go pick ‘o‘opu for go home. I can go pick prawns, make one meal before I go to sleep. Can’t do that now. If you guys were raised in the area, you guys would understand. We just wish that our children, our grandchildren, and our great grandchildren, had the chance to see what we had. I thank you for giving me the time. I didn’t read what I wrote, but this is for your guys.

1.2 Jason Camara

My name is Jason Camara. Born and raised in Lāwa‘i valley. My father get once in the valley side, up Lāwa‘i. Grew up swimming in the falls, all that stuff. I also own the

parcel that is adjacent to Botanical Gardens and bordered between the big waterfall and the bottom side of Botanical Gardens. All my life, you know, like 35 years and over family has owned that land. I've never seen the water as low as it was, it is today. I used to dive for prawns in there. Now, I can walk across the river, rock to rock, without getting my shoes wet. Before I couldn't do that. I mean, there's a noticeable between what was then and what is now. It's a clear difference. The reason why this diversion was made is probably because of sugar cane, and now it's for who knows what. I mean, I don't know. The falls up by my land in Lāwa'i, I used to swim in that. Now, no way. I wouldn't let my nephews or my nieces swim in the thing. It's just stagnant. The thing just not flowing. I mean, who knows, might be safe, might not. I don't know, but it's not as clean as it used to be. I mean the thing I'm scared about is.. so my land is kind of far away from County water. I cannot get... It's millions of dollars to get a line in there, so we get hard time for build. So, the only water we get is for our cows. We get our cows in the bottom. If we lose that water, the land is almost worthless. We gotta haul water in for our cattle. You know, this not a full time job, we no more time for be doing that and all that other stuff. If we can get a standardized flow that is constant and would give back the life of the river, would be nice. Maybe I'd swim in that thing again, maybe can gather some prawns. I mean, I don't really eat 'o'opu, but you know, I'm just here today. I don't usually do this kine stuff, but it's one big thing. This is big for our family. I mean, years we owned that place, over 35 years. All we get is one pipe that feeds our river. I mean, personal opinion, I think we should have control of the water coming down. We should be able to manage what we need and then give them to the rest. I mean, if the water was meant to come down the valley, it should come down the valley. I understand guys need water and diversions is for whatever they need 'em, but priorities should go to the landowners below and not to A&B or whoever is diverting this water. I mean, that's just my feelings. That's how I feel. You guys the experts, you guys know the facts. But if you guys ever like come down to my place, check out the river, you guys can come look. I don't know what would help you guys, but anything to do to help, I'm there. Thanks for your time.

1.3 Ezikio Quintana

Aloha, I'm Ezikio Quintana. I'm just going to be really brief. I don't think that any report should be made temporary or revisable or not, without having the USGS report made public, so that we can make an educated decision. I think that it's irresponsible and negligent, and sort of disrespectful to us to not give us all the information before making a decision. Thank you.

1.4 Kalanikumai 'O Na Ali'i Hanohano

Aloha. From Kōloa, my Kalanikumai Ka Maka'uli'uli Pua Mo'i 'O Na Ali'i Hanohano. I'm seventh generation in Kōloa, which goes back to pre-contact, and my kauhale is at the top of the northwest corner of Lāwa'i ahupua'a and Kauluamoa pohaku is the mark corner rock of the ahupua'a. We have some 466 linear feet fronting Pō'ele'ele Stream, which you guys call the West Branch or the Left Branch, and the local branch on the West Branch. As a practicing cultural mahi'ai, I grow kalo along with my other plants, herbs, and vegetables in my māla, my garden. I am above the diversions. We have kōloa duck that rest right above the old abandoned lo'i right below my place. We have the

night heron that live alongside my house in the dark of the stream. And we have plenty prawns for them to feed on. The water quality is still kind of foul because of all the bones piled up at the Andrade homestead from the slaughter house, so there's high salts in the water there. But, it sustains life. There's turbidity. What I'm here about is that water is sacred, water is life. From the rising evaporative mist warmed by the sun, to the dense occluded and positively charged clouds sparked into rain falling upon the mountain tops, through drainages to estuaries carrying nutrients feed aquatic, avian, and vegetative life as it goes back to the sea. Lāwa'i Stream does not carry nutrients back to the stream because of the diversions. It is critical in Hawaiian cosmology that we support this Kanaloa, Kū, Lono, Kāne, chain of events that sustains life. We need water in the streams sufficient to sustain the life. Not little trickles. When I was child, our family had lo'i down at the end, at the estuary, right there. And we had enough water for our lo'i before the plantation could take it. That's the way it's supposed to be, in the law, the Kānāwai. It's supposed to be that the streamflow is supposed to be able to sustain the native vegetation, the practices, the fishponds, the lo'i, and into the estuary. So many of them have been diverted to where we don't have sufficient flow to sustain turbidity and stream life. Mitigating climate change coming up. From the 'ōlelo no'eau, [*speaks in Hawaiian*]. The branch of Po'ele'ele, brings Lāwa'i to sustain and nurture and flourish Lāwa'i. But it's not. You guys are cutting it off, letting it be cut off to where it's upside-down, topsy-turvy. The reservoirs, the golf courses. Tell me, do the people and the culture need the water more than the golf courses and the tourists? We should share with them. We share, but not to the point where we are deprived of the water. And, that's what we need to do. [*speaks in Hawaiian*] Come in the doorway of the mist upland, on the stream of Lāwa'i. That is supposed to go all the way down and sustain all the way to Lāwa'i kai. You've seen the pictures, I've see the pictures of the lo'i that used to be down there. Again, I'm not saying that we should take it all back, but we should have enough to sustain growing. For climate change, the biggest threat to the west side of Kaua'i is the increasing heat and the less rains. The only to increase or to mitigate that is to increase the greenery, the restoration of streamflow, turbidity and oxygen levels sufficient to nurture vegetative growth, traditional lo'i, from its upper reaches to the estuary. Only by restoring greenery along these streams and having them go all the way, can we increase the chance of more rain and mitigate the coming climate change that we're already seeing. We need all the streams restored from the mountains to the sea. Mahalo.

1.5 Bridget Hammerquist

Aloha. My name is Bridget Hammerquist and I live in Kōloa. Thank you for having us. I think one of the things that came to my mind, since you're here for fact gathering, is that there seems to be some very important facts missing from the current draft IFSAR. And that is, how did the stream go from a low-rock wall diversion dam to what's there today. We know from the documents we were able to get from your department that there was permission to repair the side of the diversion in 2013, but at some point in time between 1990 and 2013, there was actually concrete added. In fact, there's a letter that we have from Director Bill Aila, where he describes it as a low-rock wall dam when he was writing to one of the residents who were complaining about the repair being made and he was describing it as a low-rock wall dam. That low-rock wall dam let water over.

It overtopped the dam, and that's what kept the flow in the valley for so long. But after 2013 under the guise of the repair, and there was damage done to the side of the diversion by downstream users, and the reason it was done was because somebody had added the concrete and take more water than had ever been taken before. I couldn't find any documents, nor were any provided when I did the Freedom of Information Act request for a permit to add that concrete across what used to be referred to as a low-rock wall dam when it was built in 1925 by sugar. Then sugar went in '96, and so the 1,003 acres that used to receive drip irrigation from the low-rock wall dam diversion was no more, right? And I noticed, Ayron, you referred to the diversion today as being used for agriculture in the Po'ipū area. But, I think that's a little bit of a stretch. Because, what's really happening is, not only was concrete added to the top, but because some downstream farmers, they were actually cattle people, had opened up the sides of the dam to let more water in for their cattle, so they could get water to them downstream. They got permission to repair the sides because it got eroded, and in the process when they repaired the very side of the diversion, they stuck that pipe in that goes back to the bed of the stream. And that was their way of feeding the stream, a pipe. That pipe fills with mud, fills with leaves, and the stream goes down to nothing. Meanwhile, more water than ever is being take into a different watershed where these reservoirs are, that A&B manages, and those reservoirs ultimately carry the water to the Kukui'ula development. Now, Kukui'ula development, A&B did a smart thing. They kept at least one field of coffee so they can call it agriculture, I guess. But most of that land is high-end development, a 20-acre private fishing lake. That's huge. That's where that water has gone, and that's for the exclusive use of the residents of Kukui'ula. And there's also a farm there with vegetation, fruits, vegetables, where the residents have the exclusive right to go and pick vegetables. And the employees, and I know one of them well at Kukui'ula, they keep that farm, they keep that garden for the owners, and that takes water. But I don't think that's really agricultural use, that's more commercial, private commercial use. And when I was looking through 174C, the Water Code. If you look at 174, Sections 52 to 57, they really address that if we know, back in 1989 everybody had to list their diversion, right, and they had to say what the water use was for. And McBryde did that. They said 1,003 acres of sugar were drip irrigation. But that changed, and the never went back, as far as I can tell. I never got any documents when I asked for them. They never went back to the Commission and said, you know, we still need the water but here's what we're going to use it for. And as I read 174C, section 56 and 57, those sections specifically charge the diverter of water with the legal obligation to come to the Commission and tell the Commission how they're going to use the water, in what way would it differ, and justify the take. So as I see it, before you set any interim instream flow standard, I think that a little more research should be done and maybe we should try and figure and calculate out the flow that the stream had before the low-rock wall dam had concrete added to it, and not give A&B credit for supposedly agricultural use when it's really for private development, commercial, and they're making money off of it. And the HRS 171-58 specifically says the waters are waters of the State and only the State has the right to give permission to use them. And as I see it, I don't think A&B ever obtained permission from the department for the use of the water as it's being done today. And it is depriving downstream users. Thank you.

1.6 Ned Leone

Thank you very much for holding this meeting. If I look nervous, I am, so I think I'll just tick to my testimony and try get through it. So, this testimony is offered On behalf of Lāwa'i Stream. I feel it is my responsibility to let CWRM know some facts that are not in their draft. Lāwa'i Stream is being choked and fed through a small pipe. It needs your help. I have spent most of my life living, raising a family, farming, tending to the land & stream in the ahupua'a of Lāwa'i. We have lived on our farm in Lāwa'i Valley that has approximately 1,000 feet of Lāwa'i Stream with three long deep ponds running through it. I have seen the stream just about every day for over 43 years and I have seen many changes. My children caught 'o'opu, 'ōpae, and prawns. They played in a boat going up and down the stream. The stream was healthy, water flowed 24/7 and fluctuated with the upper valley rains. From my observation of Lāwa'i Stream there has been two times the natural flow has been removed. First, in the mid to late 80s when concrete was added to the top of the 1925 low rock-wall dam. And the second time was in 2013 when CWRM gave a sight unseen approval to repair what was described as erosion when in fact the downstream owners, the cowboys, dug around the unpermitted, changed dam to maintain the natural stream flow for their cows. The 1925 low rock wall dam that was registered with the State was semi-ecofriendly and allowed the water to flow over it into Lāwa'i Stream maintaining a natural flow. And that was kind of evident by the 'o'opu and other stream inhabitants. Later, when the concrete was added to the top of the dam, it diverted 100% of the water. It was as if the stream had a lobotomy and the voice of the running water was removed from the valley. The shallow stream beds dried up and the algae invaded the ponds. The ground on our farm cracked. The cowboys needed water for their animals so they dug around the raised dam and maintained the opening. Water flowed again, and as the cowboys passed away the opening slowly closed until there was only a trickle of water. Around the end of 2009, I took the time to find out what was happening to the stream's water or lack of water. I got permission from the landowner to cross his property to the dam. In 2010, I called CWRM and talked to Robert Chong to see if they were aware of what was happening with the water. Between 2010 and 2013, we talked about four times. He seemed like he was unaware of the changes in the dam. I also asked if it was against the law to move some rocks to allow the water to go around the dam so water could flow downstream. He assured me I was not breaking any laws and it was State land and water. On February 16, 2013, the day they were going to pour concrete and close the opening, I called Chong and a message in his voice said he was no longer working there. I later found out that Chong signed the repair in 2012. The repair turned out to be a major modification of the dam. Concrete was poured to close the opening and a pipe was added to the repair making it the only source of water for the streamflow that feeds the natural habitat for the remaining approximately seven miles. My question is, where are the permits for the addition to the top of the 1925 dam? Where are the documents to support the change from a water diversion for drip irrigation for 1,003 acres of sugar per the 1989 registration of stream diversion works and declaration of water use versus water now being diverted to irrigate the corporation's 1,200 acres luxury homes, private golf course and 20 acre fishing lake? The repair in 2013 closed the dam's opening stopping the natural flow again removing the voice of the stream from the valley. The 2013 closure has devastated the whole watershed. The small pipe with holes in it and an end cap is the only source of water that feeds and nourishes about seven miles

of natural habitat from the dam to Lāwa‘i kai, which is the ocean, and that’s the majority of the 8.76 miles of Lāwa‘i Stream and the watershed of Lāwa‘i Valley. When the water is low the pipe’s holes get covered up with leaves stopping the water flow. It does not work. It is a death sentence for the whole watershed and its habitat. Since 2013, the ground water level in our deep pond has dropped about 10 to 12 inches. The ‘o‘opu and ‘ōpae are gone. There is not enough water to flow, the water is too warm. Per CWRM’s hydraulic unit study that you guys passed out on the internet there, Lāwa‘i Stream below Lāwa‘i Ditch intake is consistently subject to high turbidity, high temperature, and low dissolved oxygen due to reduced flows. From what I understand, that means it’s dying. Today, the diversion takes more water than it did when it irrigated over a 1,000 acres of sugar cane. How can they take and store over 135 million gallons of water using just three of the eight existing reservoirs that receive diverted water from Lāwa‘i Stream? That water being stored is one of the reasons that Lāwa‘i Stream is in this deplorable condition. This water is held in public trust. It is not intended for a corporation private use. Lāwa‘i Stream is being diverted to a different watershed to profit a development while approximately seven miles, of the 8 plus miles of Lāwa‘i Stream from the dam to the ocean, is dying from lack of water. It is time for CWRM to live up to its motto “Ke Kahuwai Pono.” You are the guardians of the stream, mauka to makai. Per the Water Code: Water is held in a public trust and it is CWRM’s responsibility to protect its health and the habitat of our streams. It is not for the corporation’s profit and greed. Lāwa‘i Stream needs to have a natural flow reinstated. Number one. CWRM needs to take control of our streams and not let the corporations have the control as they are no longer farmers. They are now developers and they do not own the water. I am a very concerned citizen. And on your little picture up there that shows Po‘ele‘ele and the other ice pond stream coming together. Where those two streams come together, about 25 feet apart, and from where the dam is, it may be about 70, 75 feet, and everything leaves. So what I understand, streams lead into a larger body of water that runs to the ocean, it becomes a river. So, you’re killing a river. You’re allowing the river to die, because in 70 feet it leaves the water, and all we’re getting is this little tiny pipe for seven miles of habitat. Doesn’t make sense to me, you know? I appreciate you guys holding the meeting. I really appreciate all the ‘ohana back here, putting their two cents in. Thank you very much.

1.7 Kelvin Ho

I wanna mahalo you guys first, for holding this meeting, giving us a voice. I’ve lived in Lāwa‘i valley for 27 years and I’m a newcomer there. And I live right on the edge of the right fork of the river when the valley comes down. I was just in the stream today, working and clearing the hau from the side and the bushes. In order to get to our house and the other houses that are back there, you have to cross over a small cement bridge. When get big water and it floods, people know you cannot cross, yeah, because it’s super high. So, the levels fluctuate a lot and you can tell what’s going on mauka from what’s happening in the stream. But in the 27 that I have been in there, I never saw the water not flowing. Always had water flowing, yeah, no matter how dry it is. Water comes from the back of Kahili and comes down and it feeds. As a cultural practitioner, we were always taught that the upland forest is, *wao akua*, the realms of the gods. If you hike past the waterfall, about a mile from our house and go up, you get into a zone where get

‘ōhi‘a, maile, super plenty native plants. And then the way the realm of the gods flows down to *wao kanaka*, the realm of the people, is through the water. So it’s like the energy and the spirit of all those plants too and everything of the upland forest comes down. So anytime you constrict that, you constrict and block the flow of the divine to the people. That’s one way to kind of see it too. I understand that diversions from way back and this one really no make sense now because with sugar out and the need being way less for agriculture, and then taking more water, that doesn’t make sense. I can see if you get less agriculture, you going be taking less water, but if you get no agriculture and you’re taking way more water, it doesn’t make sense, yeah. I know it’s always flow by our house, and we’re upstream from Ned guys, and to hear how low the water has gotten from people that have lived there and grown up there all their lives is... something gotta be wrong. If it’s always flowing and it’s not reaching them, then something’s blocked. I watched when they put in the pipe. And for me it’s... I’m upstream from that, so the flow part doesn’t affect me so much, but there’s no way the ‘o‘opu can come up and live out it’s natural cycle and come through one pipe that blocked. Especially a small pipe like that. So, yeah, I just really question how all that was done. And we never have really anybody to talk to when it was getting done too, so I appreciate this time. When they were putting in that recent one, the DLNR was there with the State’s approval, kind of like protecting the guys that was putting ‘em in. I know you guys’ role and responsibility is... I seen ‘em on the stuff. You guys are protectors of this and the cycles, so it’s really important to recognize that and to fulfill that for the people too. It’s really important. I have friends in Kīlauea that are organic farmers and their water comes from the reservoir system and they use ‘em for grow food and to get that food out to the community and stuff, but I’m not really seeing that now on this side. So, I just ask for your... you know, really bring the light upon this and really examine how it was that this happened and the streamflow got choked off without any kind of input or permitting. I’m really grateful for everybody here that’s willing to give up their time to come and speak on something that really matters a lot to us. So, mahalo. Thank you.

1.8 Billy Kaohelaulii

Aloha. My name is Billy Kaohelaulii. Moku of wiliwili ahupua‘a. When you guys divert the stream, Lāwa‘i, you had divert all the streams in Po‘ipū. Waikomo Stream and the other stream used to go to Māhā‘ulepū. Now when you guys went stop all that, all the taro patches that was growing taro down there in Po‘ipū, they went shut ‘em down. They shut the water down. So all the taro patches, all the taro guys was all bummed out. They couldn’t raise taro down there. Now, my heiau, in the old days used to raise the best taro in there. And the gold rush guys took all the taro. That stuff came out of my heiau, Kāneioulouma. I live right there in the heart of that, Po‘ipū. Now, that heiau used to feed a taro patch there, and they went divert ‘em. When they shut down Māhā‘ulepū and Waikomo Stream, they shut down all the rivers down there. So now, my trip is the Waikomo Stream is not going in the ocean anymore. It’s not feeding the spawning... all the fish spawn there. So all the fish not going come back. So, my trip is to open up all the rivers, like in the old days. All the rivers was beautiful. I don’t know why they divert ‘em. They taking all the water. That’s our water, it’s not their water. And the water is coming from Wai‘ale‘ale, and that thing used to go all the way to Māhā‘ulepū, all the way down us, all the streams used to... used to feed all the streams. Now, you get this

development coming in. They don't have development for their sewer, for water, they don't have nothing. They no more their setup for garbage, so now they using all our water and everything. You cannot let it happen. We going end up like the mainland. We going drink chlorine water. We cannot let that happen. Somebody gotta change this right now. We want that water flow. I want all the fish to come back. Right in Po'ipū, right before you hit the ocean. I catch prawns, I catch 'o'opu, I catch all kine stuff, right there at the end of the ocean. The end of the ocean is all the turtles, all the fish swimming around for breeding. So if you keep on doing this, we going end up jamming up. And then they waste our water, the throw 'em in the sewer plant. Supposed to go in the natural flow. We had fish, we had everything in that river. Now we no more nothing. I never like tell everybody what had in there, because had my Hawaiian rocks in there. That's why I never like tell nobody in the river. But right on that flat there, used to see the wi and the prawns. And because I used to take care of the sides of the river, I used to plant my ginger and all that stuff on the side. Because it's water, and I used to grow watercress. All on the side of that river. Everybody go, how you did that? I ain't telling you. You go come over there, raid 'em. That's what everybody did. And now, when they shut the water, I go over there, I look my poor water. Nothing in there. No more wi, no more prawns, no more 'o'opu, no more nothing. That place had full of... was alive that river. Now, no more nothing. That's why, you guys see how much people here fighting for water. We going end up like the mainland, we not going get water. We gotta stop this. Eh, these guys is rich, they can pay for the water. We no can. So all I can say... I hope you guys can do something about this, because our waters is disappearing. And so is our food. That's what we use for water the kalo, water everything. But now everybody diverting our waters, wow. Thank you.

1.9 Terrie Hayes

Aloha. Thank you for being here and for listening, and for look and spending all that time, Ayron, walking around with us. I guess what was shocking to me was to actually see the effects now and what they were. Now, Billy used to go out and catch fish. Every time he go fish, he catch 25 fish. I mean I have photographs of him with the net, throw net. He went out yesterday and he caught nothing. No, nothing. Not one fish. And Billy knows how to fish and where to find the fish. And the effects, when you say... I noticed on one of your slides, you said it's your responsibility to take care of mauka to makai. It's somehow... what's happened, that you don't see that any longer. You know, DLNR knows it's a problem to try to maintain things in their cyclical manner, because it hasn't sustained anything. That's part of what made Aha Moku reestablish themselves and try to help the DLNR understand what's going on. But if you don't take the information that you're given and do something with it, what good is it. It's tender to the hearts of the kanaka maoli. And the information they gave up, for a reason, was to help preserve what is here. And as you see fires happening around our world, things are scary in California. I mean they're super scary, and I was born and raised there. And what's happening there every single year, it's gotten worse. You know, Hope could tell you about it, she lived there. She knows that 25 years ago when they said, you know, eventually we're going to have big problems. What makes you think it's not going to occur here. We have had some pretty devastating fires down in Po'ipū, but that water is not coming to Po'ipū. When you say that water comes to Po'ipū, it's not coming to Po'ipū. It's going to

Kukui‘ula. Let’s be honest about where it’s going. Is it going for farming, like everybody said? Is it going for the uses? Negative. And if that water... when we had a meeting with the guys that are downstream users the other night, one of them said, and I don’t know if he’s here, but he said, “so that’s our water, and they have it in a 20 acre lake.” So that lake should be public. If they want to take that water and put it somewhere, who are they to keep that water on what they say is their land and make something that’s for the people there to use? That’s BS. And so the people that need the water downstream don’t have it. And if you look at that diagram you have, I don’t see any mention of any lake there. It says there’s ag use. What, golf course grass, is that agricultural? Maybe in somebody’s book, but I don’t think so. And it’s a problem that’s snowballing, I think is the word for it. You know, it’s a little bit this time, it’s not so much that time, the water flow. You know, you come and look and the water suddenly appears again, Ayron. Right? They know you’re coming and they open up the gates, and the guys say, hey, you know, since April it hasn’t been so bad. Why? Because somebody’s trying to pacify everybody. Here’s a little more trickle down your stream, so you don’t notice. You gotta stop the taking of the water. If it’s a public resource, it needs to be that. It’s against moral, legal, state, federal laws, to damage our water, our drinking water. If we don’t have enough water to clarify, to wash out what’s coming down, we’re going to have lots more issues as the development continues. You know, it’s just creating a huge problem that we really need to take a look at and not allow. You know, like Billy said, they got enough money. They can go buy their water. They can go elsewhere. They don’t need to take it from a place that it’s so precious. Thank you for your time.

1.10 Hope Kallai

Aloha. Thanks for coming over, guys. I have preliminary comments, because I’m sure you’ll probably get some more from me. And, I’m sorry, but in the IFSAR, I never read the word interim. I just read instream flow standard, so that’s what I addressed. I never found interim. In 2015, \$759,000 4-year study was initiated by USGS and you guys, CWRM, on low-flow characteristics for streams in southeast Kaua‘i, with the objectives to quantify the amount of water available under natural, low-flow conditions upstream of the existing surface water diversions, and to characterize the magnitude and frequency of low-flows at selected sites downstream of diversions. The main streams included in this study are within the watersheds, or surface water hydrologic units, or Wailua, Hanamā‘ulu, Nawiliwili, Puali, Hulē‘ia, Waikomo, Aepo, Lāwa‘i, Kalāheo, Wahiawa, and Hanapēpē. We have major issues on all these waters. The overall study will now run from June 1, 2015 to September 30, 2019. You guys know they’ve extended that. The total cost increased from \$707,000 to \$759,460 with no additional funds from the Commission than originally anticipated. This natural, low-flow data must be included in this permanent instream flow decision. Please defer any decision on Lāwa‘i instream flows until the southeast Kaua‘i low-flow characteristic study report currently being prepared by USGS and CWRM is received and incorporated into this report. It’s been 30 years since the declarations of water use, since the Water Code, there’s no reason to hurry this up in the next six months before we get these numbers. The system considers 14 diversions, reservoirs in series, and impounding water in formerly dry gulches. All these reservoirs are rated high-hazard. The ones that are not decommissioned, meaning a

breach will impact people's lives or infrastructure downstream. A lot of this is now Kukui'ula. This socio-economic impact of this diversion has not been considered. All this floodplain development. Please include decisions on impacts to floodplains in the IFSAR. And in my letter, I have from the dam safety division, maps of the impacted... the floodplains for these reservoirs in series. And I really don't think that anybody living in Kukui'ula has flood insurance for these floodplain impacts. We have FEMA Flood Zone A along our stream channels, but the reservoirs are not rated for their floodplain impacts. Please let us have the southeast Kaua'i instream flow characteristics, because everything else we have is just ditch flow records. We need streamflow records, real hydrology on streams, not just ditches for the past century. So, I don't see any reason to do it premature of getting this study. And please can we consider, we don't want another Ka Loko. People that live below these reservoirs need to know the floodplain impacts of living below them, and especially earthen dams in series are really scary. Thank you for your time.

1.11 Pua Nani Rogers

My name is Pua Nani Rogers. I live in the ahupua'a of Kealia. Born and raised there. [*speaks in Hawaiian*]. Greetings from all of us to all of you, well, all two of you. And Aloha Ayron, I remember meeting you before, right, at our Kia'i o Wai'ale'ale meetings that we've held with Bridget and Hope and many of us. This water issue has been going on for long time. And I came to just one simple conclusion. Stop all water diversions on our island, from Wai'ale'ale to our oceans. Period. I've said this 30 years ago, and I'm still saying it. I noticed you didn't even mention Wai'ale'ale in your chronology about all the things that you did with the streamflows or diversions, so that is, to me, the world's largest and most hewa diversion on earth. Diverting our Wai'ale'ale water. So, please, I read what you wrote. You know, the first thing when I saw this, I turned to page 42, because it's about protection of traditional and customary rights. And that's what I always stand for, anytime I testify, is for our culture and for our native rights, and for the care and the protection and the preservation of our 'aina. Ahupua'a by ahupua'a. And it states that the State reaffirms and shall protect all rights customarily traditional, exercised for subsistence... I couldn't even finish the word, the whole sentence, because this is all crap. You are not enforcing this law, this article in the State Constitution, because water diversions are crimes. It's cultural genocide. You're killing us, because you divert our water. It's our waiwai. It's the wealth of our lives, of our 'aina, of our children and our great grandchildren, and our future generations. Which is why we are here, you know. It's not because of us. It's not selfish reasons. It's for future generation yet unborn. So, I'll make it very simple and cut to the chase. I just found out about the diversion at the Lāwa'i Stream, and I think you should actually just stop this whole process right now and cease-and-desist further on anymore of your report until we do get the report from the USGS. Which are you familiar with? You know Chui Cheng, who is working on? Ok. It's not completed yet and we would like to know if we could please wait until that report is out and distributed and we have perused it, and then make decisions on what you're trying to do. Do you agree? Ok. Maika'i loa. So, number one, correct all the wrongs. All the wrongs is all the diversions. Make it pono. Pono means "in perfect order." And that's how I believe our streams should be from Wai'ale'ale to our kai. So, mahalo and I

hope I hear a response about you not continuing and that you wait, like we would like to wait until that USGS report is distributed to the public. Ok? Mahalo.

1.12 Chanel Josiah

Aloha. My name is Chanel Josiah. I currently reside Puna, Kaua‘i, but originally from Ko‘olaupoko, O‘ahu. I just first wanted to say mahalo for the opportunity and also mahalo to everybody who has testified, sorry, provided testimony thus far and will do so, especially our kupuna. Mahalo for that. I decided to provide this testimony last minute after Uncle Joe shared, because he shared with us this evening many of his mo‘olelo. All of the beautiful memories that water in a sacred place of being has provided for him and his memories. But, he also talked about his regrets of not being able to bring his grandchildren to the same places. And Uncle Joe’s memories, there not stories of the past, yeah, they’re facts pertaining to the cultural security that he had growing up, and the cultural security that is insufficient for his ‘ohana today. Should the department deem that no cultural practices will be affected, lack of cultural use by the majority of kanaka ‘ōiwi is a direct result of our displacement in our homelands due to foreign corporate interests. You know, sugar and pineapple plantations, which we contribute... to the partial, which both of those, sugar and pineapple plantation era, contributed to the partial genesis of oppression and marginalization of our people. And they are most notoriously known for the diverting of water. Sugar and pineapple plantations didn’t only divert water for their own capitalist pursuits, but also imposed a social hierarchy within the communities that cultivated a culture within the camps to not makes waves. We see this today, very much so in older generations. Essentially, I see the diversions of Lāwa‘i’s water and all other waters throughout Hawai‘i as a similar situation. Allowing water to be taken away from kama‘āina and given to someone else who will not, and does not, care to give us, the people of this land, a voice. And so, if you understand the plantation era, as I do, you see some social similarities. What needs to be taken into consideration is cultural potential of the area and cultural security. More community outreach, research, should be done to evaluate the potential of cultural usage before prioritizing the usage by other corporate interests that do not include the farmers of all types. So the agriculture, cultural practitioners, those who are emerging into their cultural practitioner roles, or farmers that are up and coming as well, and especially kanaka ‘ōiwi whose identity and well-being continuously flow in all of these waters. Ola.

1.13 Elizabeth Lindsey

Aloha. [*speaking in Hawaiian*] I live in both Wailua and Kalāheo, and I’m actually here to speak on behalf of the wai, which the State of Hawai‘i is illegally taking from Hawai‘i, from our ‘āina, from our people. I have one specific example as to tonight’s discussion, which is Lāwa‘i Stream. Right next to Lāwa‘i Cannery Self Storage, if you drive over that road, like I do everyday, you can smell the stink because it’s so pilau. The stream is dry. And I think everyone who had already shared their testimony tonight, can... I mean we all on that same page. You guys are stealing our water. It makes me physically sick, like I might just throw up right now. Sorry, kala mai. I have minutes, so I’m just going to take a breath. I’m going to say mahalo to everybody here tonight, especially our kupuna who have already shared. Just a quick background. I’m born in 1996. I’m 23 years old. For the sugar plantation ditches to still be in place today and even

reconstructed to be fixed, whatever you want to call it, built... You guys are continuing that social oppression, socio-economic oppression upon the people of Hawai'i. And I'm sorry, I'm looking you dead in the eye right now, but I know it's your job. You're here to listen to us, but it is also at your hands that this is happening. You're stealing directly from us, from me, from everyone behind me, from our future, from our keiki. For what? For Kukui'ula, probably. Right? I mean we've all seen the maps, we've seen the diversions, we've seen where the water goes to. You can't deny the facts. You provided those maps to us. The water sits right there, at the golf courses. I hope it makes you just as sick as it makes me, honestly. Sorry, I'm not trying to be sassy, it's just... I'm so disturbed. So again, yes, 1996. Why are those sugar plantation ditches still in place. Are we still in that era? Do we still have our kupuna being slaves to this? To this system? Do you want to continue this? Is this what you want for Hawai'i? It's not what we want. Our voices matter. We will speak up, because we matter, and you need to listen. Stealing our water is illegal. Against your own articles. What was it, 53? 53, I think. Hawai'i Constitution, Article 12, Section 7, the state reaffirms and shall protect all rights customarily and traditionally exercised for subsistence, cultural, and religious purposes. I don't see that happening. Also, to go off of what Chanel had just previously said, you also have to take into consideration the potential for cultural practices. Because I'm going to practice my culture in Po'ipū, near Lāwa'i Stream, and I want to see it flowing. I want full restoration, 100 percent restoration, of Lāwa'i Stream. For your guys to do your research with the USGS published study that is expected to come out in 2020. If those ditches aren't removed before that fieldwork is published, then it is incomplete. You need to remove the ditches. You need to restore the stream. Also, the noninstream use and the instream use is not a balancing act. All use for the stream should be instream. Let it flow. I'm trying to think if there's anything else I need to say. Your status quo is absolute trash. It is trash. You need to redo it. 1988, table 11-1, whatever that is, it's older than I am. It needs to be updated. So, you go ahead and update it and you start by deconstructing all of the ditches and I will be there to help you if you need help. Again, thank you for your time. Thank you for listening to us. Thank you, all of you. Do you have any questions for me?

1.14 Chanel Flores

Aloha kākou. Aloha. My name is Chanel Flores. I also go by my Waipu'ilani, which is my name as well. Waipu'ilani, in the Hawaiian dictionary, translates to the 'waterspout of heaven,' which I like to say it is a beauty to behold, but a force to be reckoned with. Which I pretty much live up to my name. Sitting here before you folks this evening, as a descendant of my ancestors, as much of us are doing today and tonight. We all know wai is life, is a life-giving force for all of us. Not just kanaka maoli, not just kanaka 'ōiwi, for kanaka at heart, but everybody around the world. That's pretty apparent, very obvious. Waiwai is another terminology that is used often with our Hawaiian culture to describe and depict our wealth and abundance. And you can tell that, as well, with all of the legends of the historic facts that are presented in the timeless books that we have of where our kanaka would gather or was near natural resources where the water is. Where the water is, life prevails. So with that being said, you can see the certain destruction that has been created by the diversions. If we still keep our focus on water, we all know, aside from the kanaka maoli aspect, we are all made up of water. I think it's 75 percent

of us, our bodies are made out of water, right. If we divert the water in our bodies, what do we have? Basically, dehydration. Which is what we're doing to our 'āina. And we're dehydrating and pretty much sucking the life supply of our 'āina. Not just our people, but our land and our future. And so, I am sitting up here as a cultural practitioner, kanaka maoli, a protector like many of us over here. The terms that you're going to hear often are aloha 'āina, which is our patriotism or the love of the land, and kia'i, which are the protectors. And these are not crazes, yeah, this is not trendy words that you're going to hear. This is terminology that's going to be heard of and used often, because we are all here, this time, holding everyone accountable for their actions that they've continued to bestow on our lands and our people. And I'm sitting in the corner here, reading the sign that's up there with the County of Kaua'i about pride and all the acronyms that each one stands for. With pride, responsibility, integrity, and respect, diligence, empathy, gratitude, and humility, is everything that we stand for. And sometimes I don't that they stand for, to be quite honest. So sitting before you folks as a descendant of my ancestors, I also sit before you folks as an ancestor to my descendants that are still yet to come. And as a practitioner of the culture, I love to play music, I sing about these songs, often of places that I never get to visit. One of those places I did get to visit, however, was like Hi'ilawe. In the valley, we talk about this beautiful, thundering twin waterfalls, that you approach and you just have this vision of all the birds circling around these waterfalls and these huge, two, twin waterfalls just dumping into this gigantic pond. I had the opportunity of hiking into this place. And those seven football fields long...yes, one tita like me made it into Hi'ilawe, ok, you guys? It was the most amazing thing that I did, and that's one of the things that I enjoy as a hula dancer, as a singer, as a cultural practitioner, in the many ways that we contribute. When I got to that waterfall, I was kind of disappointed because what I have heard and sang about so much, of these thundering waterfalls, was more like a sprinkle that came from the top of this beautiful cliff. Regardless, the view there was amazing. It's beautiful. I'm sharing this with you folks because I am hoping that I don't have to sing mele, like this, any more where it's just a memory, being told of what once was. And I hope you guys take that into consideration for any future projects that you guys choose to get involved in and especially with the interim IFS. Lāwa'i Stream, if we can bring it back to life, we can all enjoy those mele about Lāwa'i too, and still keep that preserved and perpetuated for future generations to come so that people like Uncle Joe don't have to tell stories of things that he used to experience. We get to still talk about it and sing about it in our mele today. Mahalo.

1.15 Tara Fernandez

I sat here listening to everybody and I felt that my generation needed to be heard. I grew up in Lāwa'i valley, and I used to fall asleep with the sound of the river. And I go there now and you cannot even sit by the river and hear anything. I used to play along with Jason that was here and other kids in the neighborhood, and we used to play in the river, swim, go in the boats, do all kinds of stuff. 'O'opu, prawns, the tadpoles, the guppies. Not even the guppies can survive anymore. The land is dead. We have animals on the property and we have to give them Department of Water, because we cannot even have them drink from the river 'cuz there is no water anymore. My kids were young enough that they were able to play in it. But my nieces that go up there now, they don't even get

to go to the river 'cuz there's nothing there for them. My next generation of my grandkids, there might not be a river at this point. If we do not correct what's going on and what we see what is wrong, how will our next generations have anything. I come home, going to the west side, and I see the black pipe overflowing from the water you guys are taking. And it runs down the highway more than it runs down the river. And it is sickening to see that kind of waste, when none of the animals and the fish, the blue herons that used to come, the ducks that used to come, there's nothing. We're not trying to be greedy, but everybody else around us is. We just want what is right. Thank you.

1.16 Brandon Dearstynne

Aloha. First of all, I have to begin with, water first. Water is everything. Everything you enjoy, everything you love, everybody you know, is made up of water or starts with water. Without that, there is nothing. That is what it starts with. So let's get back to our roots and remember that first of all. I'm a transplant. I was not born here. I don't have any roots here, but I've been here for seven years and I like to call this my home, and so I'm going to stand up for it. You know, Wai'ale'ale is the wettest place on the planet. Nature is telling you something right there. And if you think you know better, if you think, you know, you know better, that to divert that water, that nature, right then and there should be a red flag for you. This is common sense. I feel like I shouldn't even be up here talking about this. We've been fighting this for hundreds of years. I don't know what more you need. This power, these companies, they will figure it out with or without the diversion. We will figure it out. We have been. Life have been going for how long, like. you will figure it out. This is hurting a lot of people. Lot of elders. This is, you know, hurting people in the future of children that grow up here that will not even know the difference if these things happen. And so, we're draining all of our resources. This island should be an example of protecting our resources and showing an example of what life can be without diverting, without doing that. You know, I just heard a seventh generation local Hawaiian telling you that this is wrong. How... Right there, that's another red flag that you guys should be like not go through, like... giving you examples of how the rivers used to be. You are destroying life. You're taking life. You are not giving life. And that should be, again, alone, like, enough. There are laws to protect us, to protect our waterways, and that should be enough. There's already laws protecting us. Like, we shouldn't be here in a community, all preaching, like we're all to the choir, to ourselves. This should not be. Water should not be owned by any man. It is to be shared and, if anything, we should come up with a way to make both sides happy. Not for us to divert all the water, start taking everything. It's not sustainable. It's the simple fact, you know. It might work for a little bit, but it's not going to do. And may I remind you before we had a money system, before we had gold or money, our wealth was water. It's been said again and again, waiwai. That was our wealth. You know, it was the waterways that gave us our wealth and I think that we should start with all this new thing... I mean you guys saw it today with the internet outage. Like, everybody's going crazy with any internet. We need to start going back to our roots. Start going back to what we know. This is upsetting everyone. You guys gotta ask yourselves, in your hearts, do you really think that this is all worth the power that is going to be given. I want to keep it short. That's really all I have to say. Mahalo ke akua.

1.17 Felicia Cowden

Hi. Felicia Cowden. I am a County Council person. I came primarily to listen to the needs of the people that are here. I want to thank you, Ayron, for the walk that we went on and looked. I want to acknowledge to both of you that this is not your fault. We're not holding you responsible for the wrong that's happening. I appreciate that you're listening to be transmitting this voice and this perspective to the people who do make the decisions. I value everything that the people have said, and so I only want to add a couple other things that I haven't heard yet. I'm not discounting any of what is said. I've been serving as Committee Chair for Public Safety and Human Services, something that I'm highly conscious of, is our crazy amount of intense infections. We have a lot of bacterial counts in the water, lot of bacterial infections. I want to try and learn of what's happening. Why it seems to be so excessive. Part of it is a lot of standing water in our natural streams. And so, instead of the water flowing, they stagnate. And there's areas where it builds up and it becomes putrid. Then, when we do get a big strong rain, the water is going to come down and flush down and bring that out into the sea. Bring it out to where people are around, and even just like when people live near these waterways, you know, they can't and shouldn't really be playing in that little bit of trickle that is left there because it becomes concentrated with this high bacterial count. So, I feel like that hasn't really gotten expressed yet. And then, just one big broad brush stroke that I see across the island, is the amount of sadness, depression, and especially among our youth. Two times in the last 10 years, we've been at the top of the list for youth suicide and youth suicide attempts. I see all this type of imbalance of power, of being a contributing factor of that. I respect all the cultural aspects that are profound and important, and I just don't want to be speaking beyond what the people are speaking, but I want to bring those particular points in place and I think this is really critical. I'm glad you're here. I'm disappointed actually, that the companies that are also beneficiaries aren't here also. That would be nice, so that we were having a balanced conversation, so they would be hearing it. The blame isn't with you. But thank you for stewarding this conversation and I humbly ask that these people are heard. Thank you.

1.18 Peleke Flores

Aloha. Peleke Flores. I'm just jumping in with the flow. Learning little bit, and been learning that the flow ain't so good. I guess, where I'm from. Born Hilo, but from Waimea and Hanapēpē, my 'ohana. Come from taro farmers, hunters, fishermen, paniolos, and salt makers. When I was talking to Uncle Joe, I was like ho, the last time I went down there for swim was over 20 years ago now. But didn't realize... I wasn't in that mentality yet of how the river was flowing, or healthy or not, just jump in the water. At least now, knowing and listening to everybody, I kāk'oo with everybody says and support that. It is pretty common sense that that river is dying. Everything else going die with it. From the practices inside, from just your regular harvesting, or living off of the river itself, and the practices been built along with it, the cultural ones from making has and kahes to catch fish, to the taro patches to the loko i'a, and down into the river mouth where the freshwater gotta go for the limu and everything else outside of that. Get one whole food structure that just got damaged. One whole icebox that just got damaged. Can be returned. Currently working with Malama Hulē'ia and we're restoring the... at least cutting down the mangrove to open up the fishpond and can show everybody that

can. That icebox is still there. Everything else, like, the water just gotta come back and we can fix everything. One kupuna that... the 'ōlelo no'eau that always sticks with me, is [*speaks in Hawaiian*]. Talks about how before, back before, the way our kupuna preserved food, one of the methods is putting 'em all in the pa'akai. That's how we kind of had to set our mentality now. We doing restoration at the lo'i, loko i'a, it's all overgrown with bushes, or mangrove, or hau bush, but it's just under pa'akai. All of that is pa'akai right now. All we gotta do is hemo the pa'akai, wash 'em off, and the thing will feed again. We in that generation hopefully, when the water come back, we can dust off all that pa'akai and let the thing flow so that our next generation can feed again, so we can connect all that food resources. [*speaks in Hawaiian*] Mahalo.

1.19 Debbie Jackson

Debbie Jackson, aka Debbie Lee Jackson, aka Deborah Lee Jackson, aka Meli. I'm not really sure why I use different ones at different times, but just so you know all of 'em. The public trust is a beautiful thing. The State as the trustee, however, has let us down by allowing our water to be taken by commercial use which is a non-public trust use, before public trust uses. I agree with earlier testimonies that call for kanaka to have final say on all water use. Non-public trust uses can take a number, after public trust uses are met. [*speaks in Hawaiian*]

1.20 Joseph Kekaulike Kamai

There were a couple things that I forgot. All of us. We are practitioners. Uncle Billy and I used to do... we used to harvest from the land. We used to make parties right in the... We used to go up... our parties were made simple. We get all the boys together, we run the shoreline, we pick 'opihi, a hukihuki. We go pick our limu. Uncle taught me little tricks about how to smell the fish. You get down there, you know they stay, 'cuz you smell the limu. When you throw, one throw, you load up your cooler, you gone. On the way home, you go house to house. You give back. When they started shutting down the wai, they never give us room to go and do our practice, do our pule, thank the 'āina for what it gave us. They locked us out. Kalāheo same thing. You go up the road, soon as you reach by the macadamia nut farm, ho, stuck already. You no can go up any more. The thing I came to ask, is to tell 'em stop locking us out from our 'āina. And then they come and tell us that, oh, nobody practicing over here. Nobody gathering. Why? 'Cuz you locked the gate on us. That is the reason why Wai'ale'ale, they doing the same thing. They put up gates and fences so we cannot go up. My godfather and I used to travel the whole island, mauka to makai. Fishing, hunting, whatever we got, we took home. We made sure everybody along the way was given food. I go dive down Māhā'ulepū, I go by Uncle them's house, by my brother-in-law Kaimana's house. We sit down right in the garage, right in the... well, they didn't have a garage, excuse me... was the driveway, right underneath the tree house. Park the truck. Pull out the cooler and we just start giving. You know why? The Lord always taught us the more we give, the more we get. And it's not for just us, it's for everyone. You no feed one person, you go home and you make sure you feed all the kupuna all the way home. They depriving our right by putting up their gates. They cut off our water and then they always saying, oh, nobody practice over here. You get caught over there, they call the police, first thing. Oh, we trespassing. Why we trespassing, it's our land? This cannot keep on going. My nephews are working

hard. Well, excuse me, our nephews are working hard up Wailua. They making lo'i. And they had to fight with DLNR, the State, the County, even had to grumble with Grove Farm, because they think they own our wai. But I'm proud of those boys, because they no give up. They keep on fighting hard to prove their rights, to prove the kanaka's rights to the land. All I asking is for release of water so our children can see, and our children to come, so they can see the beauty. And we all know that that water went from mauka to makai, and it nourished everything along the way. When it was going down, it cleansed the land. When it reached the ocean, he feed the reef. Right or wrong, uncle. You walk around, there was fish all over the place. The parts where he talking about, where we used to go by Kūhiō, yeah, you could smell the fish. Never need look, you just smell. You close your eyes and you catch the strongest scent and you let go. And I promise you, your net was full. No more that now. Never going be like that again. Until they start releasing our water. The reef's dying. Yeah, of course, because the cut off all the water going in. But they using that for an excuse, because they want to keep the water to themselves. The water is not theirs. Because you guys know the law. The law states that no corporate or individual can own the water. It belongs to the people. It doesn't make sense that we have to come in, all of us, have to state our mana'o, and hopefully... well, we pray, that you guys do hear and it's not falling on deaf ears or blind eyes. Because there's a lot of damage that has been done. And it's going to be hard to fix. And this is what I wanted to say. Tell them to stop locking us off of our land. Of course we cannot practice, we cannot gather, especially when you get one gate. If you want to get through, you going to have to take a torch to 'em. Either that or hook up my truck and we blast that thing out of there. But, it's not worth it, because all we going do is get trouble. I think I speak for all of our people, especially all of us from my family that are gatherers and practitioners. It's gotta stop. It really does. Because you not hurting yourselves, we hurting our mother. And if she isn't taken care of, who's going to take care of us. Thank you.

1.21 Ames Wong

I representing Hop Hing. And if anybody over 100 years old over here, you know who we are, because we grew rice in Lāwa'i valley. On my acreage there, if I going grow taro, I need water. There's not enough water in the stream to plant any taro. I need cool water, not hot water, because it's Lāwa'i ditch now. It's not a stream. It's not big enough to suck water out of the stream for my lo'is. So I get five acres down there, and all I need is water. Just little bit more than what we have now, and that's it. All I want is water.

**2.0 Michael H. Kido, University of Hawai'i at Mānoa,
Center for Conservation Research & Training**

Michael H. Kido, Aquatic Biologist
University of Hawaii at Manoa
Center for Conservation Research & Training
Email: mkido@hawaii.edu

Ian C. Hirokawa (ian.c.hirokawa@hawaii.gov)
cc. Brian Nielson (brian.j.neilson@hawaii.gov);

26 October 2019

**Comments to the Commission on Water Resource Management on
Establishing an Instream Flow Standard for Lawai Stream (Island of Kauai
Hydrologic Unit 2050)**

While the Commission did a credible job in compiling relevant information needed to establish an Instream Flow Standard for Lawai Stream in their September 2019 Report, I would like to provide some clarification on our 2007 bioassessment study in Lawai Stream (Kido 2007) as well include results of a 2010 hydrology study conducted in lower Lawai Stream by hydrologist Matt Rosener for The National Tropical Botanical Gardens (Rosener 2010) which was not cited in the Report.

While the CWRM Report cites correctly the “Poor” health rating of the lower Lawai Stream reach surveyed in my 2007 study (Kido 2007), it did not include in its summary the finding that:

“Native aquatic species presence in this estuarine-influenced reach was found to be relatively robust with all expected native *‘o‘opu* and *‘opae* species consistently present albeit not at abundance levels comparable to that found in high quality streams. Particularly notable during the study were improvements observed in populations of *‘o‘opu-nopili* (*Sicyopterus stimpsoni*) which are highly “sensitive” to human-induced degradation.”

Therefore, despite all of the long-term human-impacts occurring in the surrounding Lawai Stream watershed (i.e. chronic water diversion, plantation-scale agriculture, residential development, introduced alien aquatic species, etc.), robust populations of native stream animals are able to persist. Careful attention, therefore, must be paid to improving stream flow regimes in Lawai Stream and controlling factors that degrade its overall health with the goal to improve its biological integrity from “mountain-to-sea”.

In my opinion the central issue we face is whether or not to continue to allow water diversion (Diversion 812) from Lawai Stream out-of-watershed (*ahupua‘a*) to Koloa – Poipu through the Lawai Ditch. Rosener (2010) analyzed the 9-year continuous gage record (1963-1972) from the USGS station (#16052500) located on the cane-haul bridge between the Allerton and McBryde gardens (NTBG). Rosener’s analysis calculated a median daily discharge and mean daily discharge as 3 cfs and 8.3 cfs, respectively. Baseflow for this section of lower Lawai Stream calculated at

Q_{95%} was 0.6 cfs and **Q_{70%}** (USGS best estimate) was 1.9 cfs. He notes that the amounts of well - surface water withdrawals in the watershed were unknown and concludes that the "...natural baseflow at the NTB is some value greater than the 1.9 cfs computed for this study, but without a reliable record of upstream flow diversions it is not possible to say how much greater with certainty."

According to Rosener (2010), McBryde Sugar registered the Lawai Intake in 1988 as taking 50 MGD (77.6 cfs) even though " the registration documents show the divertable capacity of the ditch system to be 20 MGD (31 cfs) and annual use data provided for the 5-year period from 1983 to 1987 suggests an average of 1.65 MGD (2.56 cfs) was being diverted from the stream at the time." According to Rosener's analysis, "...the Lawai Intake was diverting (on average) roughly the same amount as the Lawai Stream baseflow in the NTB reach, suggesting that more than half of the flow in Lawai Stream was being withdrawn for irrigation uses during this period."

It is clear that continued water diversion from the Lawai Ditch out-of-watershed to Koloa – Poipu will have a significant negative impact on water resource availability to local appurtenant and riparian water uses in Lawai Valley as well as significantly contribute to the degradation of its stream's biological integrity from "mountain-to-sea" and should not be allowed.

A reasonable determination of an Instream Flow Standard for Lawai Stream (or any other Hawaiian stream) should rely upon an accurate estimate of base flow (**Q_{95%}** or **Q_{70%}**). At a minimum, maintenance of this base flow contained within its Hydrologic Unit (i.e. *ahupua'a*) connected from "mountain to sea", should be adopted as policy. With climate change upon us, however, even this may not be adequate. We have to plan strategically for a time in Hawaii when ground-surface water resources become increasingly limited by unpredictable rainfall patterns and extended periods of drought with even greater emphasis placed on protecting a stream's inherent biological integrity.

Literature Cited

Kido, M.H. 2007. A biological and habitat assessment of Lower Lawai Stream, Kauai. Final Technical Report to the National Tropical Botanical Garden. June 2007. Hawaii Stream Research Center, University of Hawaii .

Rosener, M. 2010. Lawai Stream hydrology study and floodplain mapping project. Technical Report to the National Tropical Botanical Garden, December 2010.

3.0 Hope Hamilton Kallai

2019 October 28

Hope Hamilton Kallai

Commission on Water Resources Management
Hawaii Department of Land and Natural Resources
P.O. Box 621
Honolulu, HI 96809
(808) 587-0219
dlnr.cwrm@hawaii.gov

Re: Lawai (2050) Instream Flow Standard Assessment Report

Aloha e Kaleo and Water Commission:

Mahalo for considering my comments on the Lawai Instream Flow Standard Assessment Report.

In 2015, a \$759,000, 4 year study was initiated by United States Geological Service (USGS) and the Hawaii Commission on Water Resources Management (CWRM) on Low-Flow Characteristics for Streams in Southeast Kauai, Hawaii, with the objectives of: The objectives are to:

- 1) quantify the amount of water available under natural, low-flow conditions upstream of existing surface-water diversions; and
- 2) characterize the magnitude and frequency of low flows at selected sites downstream of diversions.

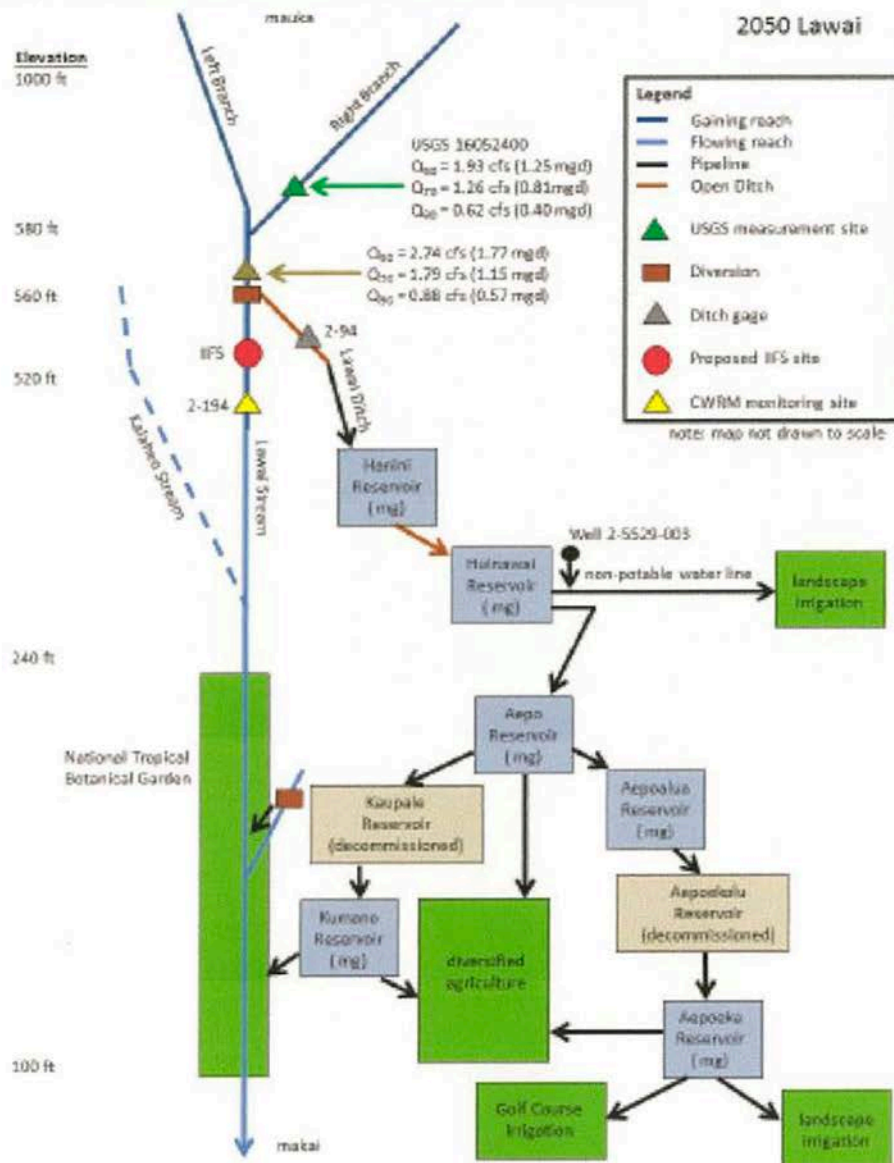
The main streams included in this study are within the watersheds, or surface water hydrologic units, of Wailua, Hanamā'ulu, Nāwiliwili, Puali, Hulē'ia, Waikomo, Aepo, Lāwa'i, Kalāheo, Wahiawa, and Hanapēpē (see page 12, Exhibit 1). The overall study will now run from June 1, 2015 to September 30, 2019. The total cost increased from \$707,000 to \$759,460, with no additional funds from the Commission than originally anticipated.

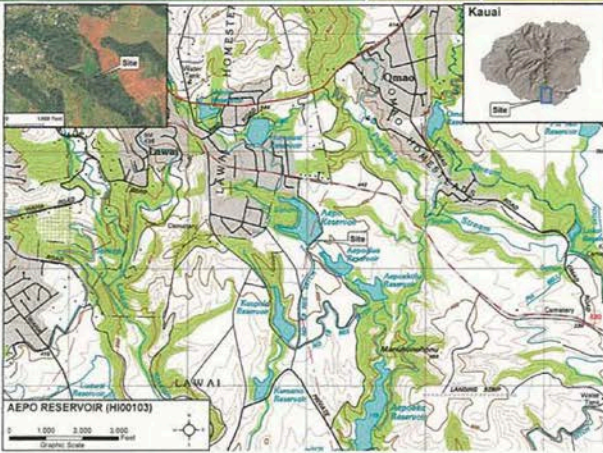
This natural, low-flow data must be included in this permanent in stream flow decision. **Please defer any decision on Lawai instream flows until the Southeast Kauai Low Flow Characteristics Study report, currently being**

prepared by USGS and CWRM, is received and incorporated into this report.

This system considers 14 diversions, reservoirs in series, and impounding water in formerly dry gulches. All these reservoirs are rated High Hazard, meaning a breach will impact people’s lives or infrastructure downstream. This socioeconomic impact of this diversion has not been considered. **Please include discussions on impacts to flood plains in the IFSAR.**

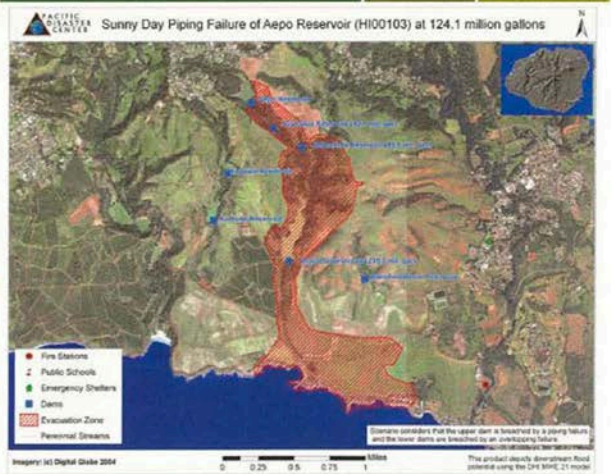
Figure 11-3. Simplified schematic diagram of the Lawai Stream, registered surface water diversions, ditches, pipelines, reservoirs, and proposed location of the interim IFS in the Lawai Hydrologic Unit, Kaua'i.





1. General Information		2. Owner Information	
a. State Dam ID	KA-0103	a. Name of Owner	A.S.S. Properties, Inc., Alexander & Graham, Inc.
b. National ID	100103	b. TRM(s)	(K) 2-4-003.001
c. Dam Name	AEPO RESERVOIR	3. Hazard Potential Classification	
d. Other Name(s)		a. Hazard Classification	High
e. Longitude / Latitude	-155.4831 / 21.9127	b. Emergency Action Plan	Yes
f. County / Island	Kauai / Kauai		
g. Type of Dam	Earthfill		
h. Purpose	Irrigation		
i. Completed / Last Modified	1901 / 1984		
j. Nearest City / Town	KAHUNA (2 miles)		
k. Water Body Type	State Regulated Dam		
l. Dam Height	70 ft		
m. Dam Length	440 ft		
n. Drainage Area	0.17 sq miles / 109 acres		
o. Primary Spillway Type	Flow		
p. Maximum Storage	437 ac-ft / 149 MG		

Data Provided: 10/24/2019 KA-0103 AEPO RESERVOIR - Evacuation Map Page 1 of 2



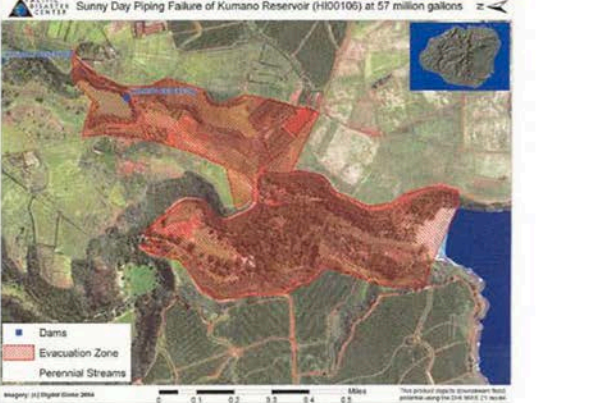
December 13, 2010

Potential impacts of Flood damages due to this diversion and impoundments are significant.



1. General Information		2. Owner Information	
a. State Dam ID	KA-0106	a. Name of Owner	A.S.S. Properties, Inc., Alexander & Graham, Inc.
b. National ID	100106	b. TRM(s)	(K) 2-4-003.001
c. Dam Name	KUMANO RESERVOIR	3. Hazard Potential Classification	
d. Other Name(s)	Shimada Reservoir	a. Hazard Classification	High
e. Longitude / Latitude	-155.4871 / 21.9127	b. Emergency Action Plan	Yes
f. County / Island	Kauai / Kauai		
g. Type of Dam	Earthfill		
h. Purpose	Irrigation		
i. Completed / Last Modified	1952 /		
j. Nearest City / Town	Lāwai (0.8 miles)		
k. Water Body Type	State Regulated Dam		
l. Dam Height	46 ft		
m. Dam Length	400 ft		
n. Drainage Area	0.11 sq miles / 70 acres		
o. Primary Spillway Type	Flow		
p. Maximum Storage	175 ac-ft / 61 MG		

Data Provided: 10/24/2019 KA-0106 KUMANO RESERVOIR - Evacuation Map Page 1 of 2



November 29, 2010

Mahalo for ensuring mauka-to-makai healthy streamflow of Lawai Stream, including the USGS report and considering flood impacts.

Hope Hamilton Kallai

4.0 Ned Leone

Testimony for Lawai Stream 10/28/19

This testimony is offered On behalf of Lawai Stream. I feel it is my responsibility to let CWRM know some facts that are not in their draft. Lawai Stream is being choked and fed through a small pipe. It needs your HELP.

I have spent most of my life living, raising a family, farming, tending to the land & stream in the Ahupua'a of Lawai. We have lived on our farm in Lawai Valley that has approximately 1000 ft. of Lawai Stream with 3 long deep ponds running through it.

I have seen the stream just about every day for over 43 years and I have seen many changes. My children caught O'opu, Opae and prawns. They played in a boat going up and down the stream. The stream was healthy, water flowed 24/7 and fluctuated with the upper valley rains.

From my observation of Lawai Stream there has been two times the natural flow was removed. First, in the mid to late '80s when concrete was added to the top of the 1925 "low, rock wall" dam without a permit. The second time in 2013 when CWRM gave a sight unseen approval to "repair" what was described as erosion when in fact the downstream owners, the cowboys, dug around the unpermitted, changed dam to maintain the natural stream flow for their cows.

The 1925 "low rock wall" dam that was registered with the State was semi eco-friendly and allowed water to flow over it into Lawai Stream maintaining a natural flow as evident by the O'opu and other stream habitat. Later, when concrete was added to the top of the 1925 dam, it diverted 100% of the water. It was as if the stream had a lobotomy and the voice of the running water was removed from the valley. The shallow stream beds dried up & algae invaded the deep ponds. The ground on our farm cracked big time. The cowboys needed water for

their animals so they dug around the raised dam and maintained the opening. Water flowed again. As the cowboys passed away the opening slowly closed until there was only a trickle of water. Around the end of 2009 I took the time to find out what was happening to the stream's water or lack of water. I got permission from the land owner to cross his property to the dam. In 2010 I called CWRM and talked to Robert Chong to see if they were aware of what was happening with the water. (Between 2010 & 2013 we talked about four times.) He seemed like he was unaware of the changes in the dam. I also asked if it was against the law to move some rocks to allow water to go around the dam so water could flow downstream. He assured me I was not breaking any laws and it was State land & water. On 2/6/2013 the day they were going to pour concrete and close the opening, I called Chong and a message in his voice said he was no longer working there. I later found out that Chong signed the "repair" in 2012. The "repair" turned out to be a major modification of the dam. Concrete was poured to close the opening and a pipe was added to the repair making it the only source of water for the stream flow that feeds the natural habitat for the remaining approximately 7 miles to the ocean.

Where are the permits for the addition to the top of the 1925 dam??

Where are the documents to support the change from a water diversion for drip irrigation for 1003 acres of sugar per "The 1989 Registration of Stream Diversion Works and Declaration of Water Use" vs. water being now diverted to irrigate the corporation's 1200 acres of luxury homes, private golf course and a private 20 acre kayak fishing lake??

The "repair" in 2013 closed the dam's opening stopping the natural flow again removing the voice of the stream from the valley. The 2013 closure has devastated the whole watershed! The small pipe with holes

in it and an end cap is the only source of water to feed and nourish about 7 miles of natural habitat from the dam to Lawai Kai (the ocean), the majority of the “8.76 miles” of Lawai Stream and the water shed of Lawai Valley. When the water is low the pipe’s holes get covered with leaves stopping the water flow. **It does not work!** It is a death sentence for the whole watershed and its habitat. Since 2013 the ground water level in the deep pond has dropped about 10-12” inches. The O’opu and Opae are gone. Not enough water flow and the water is too warm! per CWRM’s IFS:Hydrologic Unit of Lawai (2050) **“Lawai Stream below the Lawai Ditch intake is consistently subject to high turbidity, high temperatures, and low dissolved oxygen due to reduced flows.”**

Today, the diversion takes more water than it did when it irrigated over a 1000 acres of sugar cane.

How can they take and store over 135 million gallons of water using just three of the existing eight reservoirs that receive diverted water from Lawai Stream? That water being stored is one of the reasons that Lawai Stream is in this deplorable condition! This water is held in public trust. It is not intended for a corporation’s private use. Lawai Stream is being diverted to a different watershed to profit a development while the approximately 7 miles, (of the “8.76 miles” of Lawai Stream) from the dam to the ocean is dying from lack of water!

It is time for CWRM to live up to its Motto “Ke Kahuwai Pono”. You are the guardians of the stream Mauka to Makai. Per the State Water Code: Water is held in a public trust and it is CWRM’s responsibility to protect its health and the habitat of our streams. It is not for corporations’ profit and greed.

Lawai Stream needs to have a natural flow reinstated!

CWRM needs to take control of our streams and not let the corporations have the control as they are no longer farmers. They are now developers and they do not own the water!

Ned Leone, a concerned citizen

State Water Code State Water Code

The State Water Code, Chapter 174C, Hawaii Revised Statutes (HRS) was enacted into law by the 1987 Hawaii State Legislature for the purpose of protecting Hawaii's water resources. It provides for the legal basis and establishment of the Commission on Water Resource Management and its authorities and responsibilities.

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

Other Concerns

Draining the water table

Mud from Lawai Ditch-Diversion throw away

% lost to leaks, evaporation, seepage, etc. Lawai Ditch & reservoirs

Invasive vegetation in the stream without the natural flow

Draft shows a medium flow at 1.77 mgd & the 1989 registration shows 3 mgd above dam?

References

CWRM IFS: Lawai Stream, Kauai

Instream Flow Standard: Hydrologic Unit of Lawai (2050):

<https://dlnr.hawaii.gov/cwrmsurfacewater/ifs/lawai-2050/>

Mike Kido: Habitat Assessment of lower Lawai Stream, Kauai:

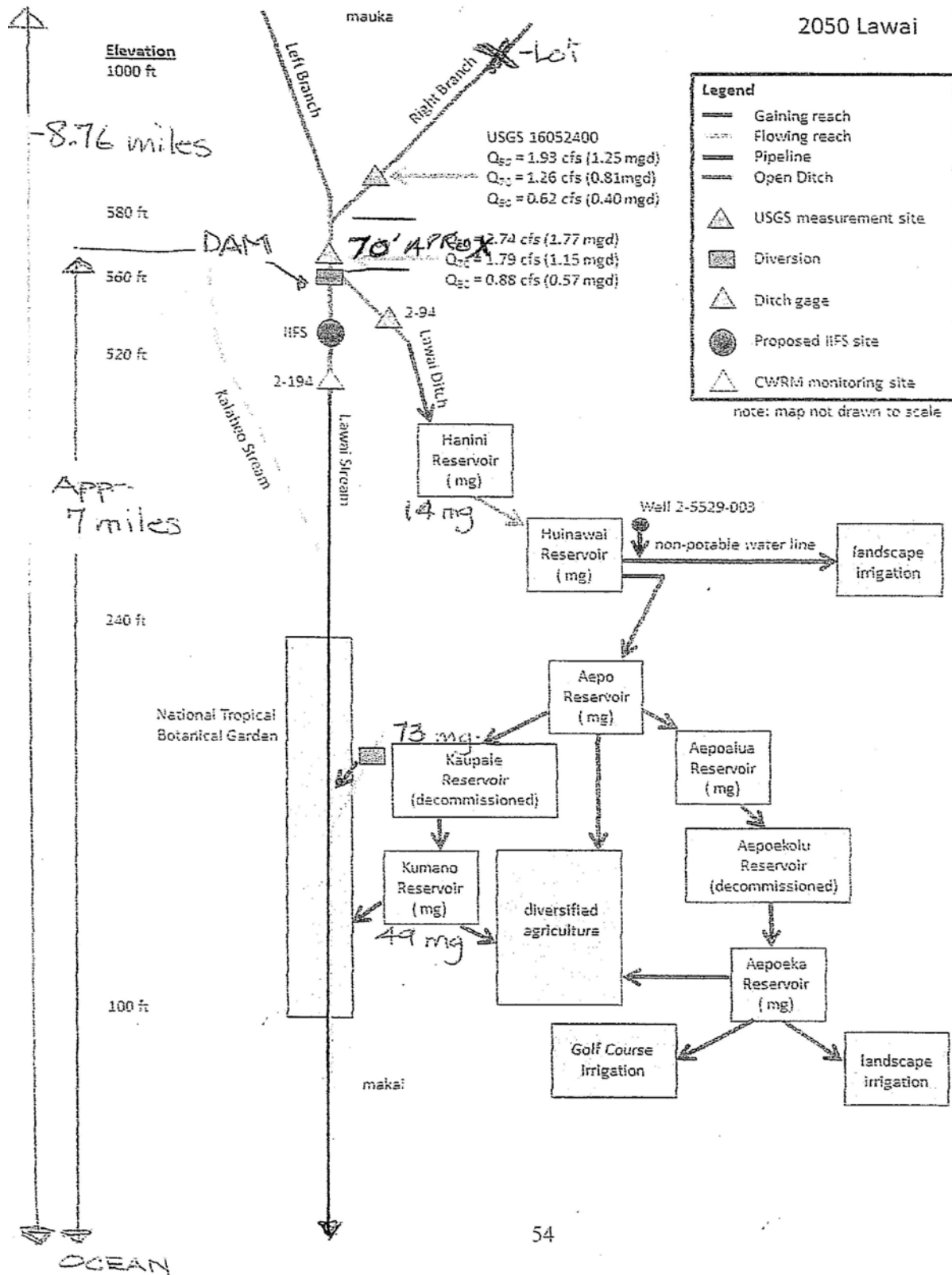
https://ntbg.org/sites/default/files/generaluploads/lkbiologicalhabitatassessment_lowerlawaistreamjun07.pdf

“Originally, the diversion dam consisted of a low rock wall within the stream...”
per 7/26/2013 email from DLNR chair William Aila’s Factual Background

Hanini reservoir holds	14 mg	
Kaupale reservoir	73 mg	(decommissioned)
Kumano reservoir	49 mg	
Aepoekolu reservoir	?	(decommissioned)
Huinawai reservoir holds	?	
Aepoekolu	?	
Aepo	?	
<u>Aepoeka</u>	?	
Total million gallons	???	

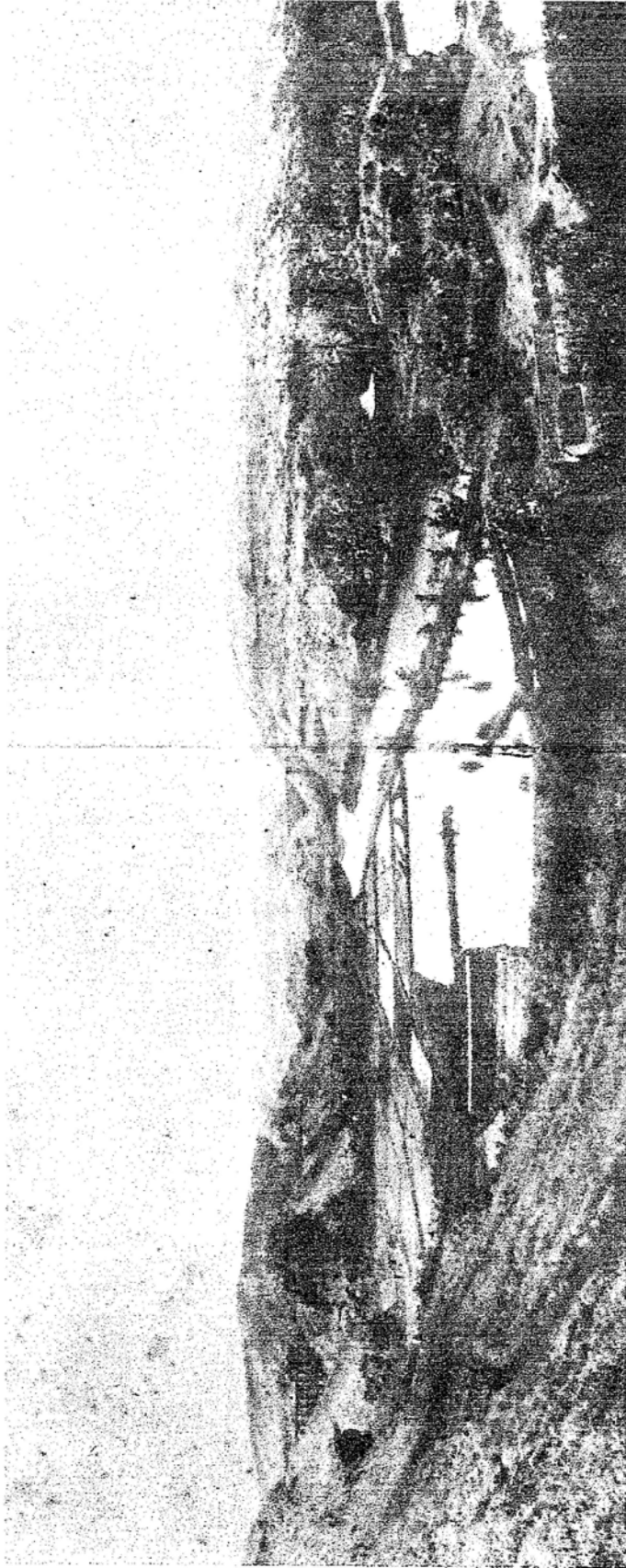
Plus what % is lost to; leaks, evaporation, seepage, waste and just bad management?

Figure 11-3. Simplified schematic diagram of the Lawai Stream, registered surface water diversions, ditches, pipelines, reservoirs, and proposed location of the interim IFS in the Lawai Hydrologic Unit, Kaua'i.









A panoramic view of Lawai about 1905. The small house to the right is the Queen Emma cottage after it was lowered over the cliffs. (Photo courtesy John G. Allerton)

5.0 Sharon Goodwin

From: [Sharon Goodwin](#)
To: [DLNR.CW.DLNR.CWRM](#)
Subject: Pertaining to Lawai Stream, Lawai, Kaua`i
Date: Sunday, November 03, 2019 10:10:13 AM


Aloha CWRM Chairperson and Staff,

On behalf of Ned Leone, resident of Lawai, Kaua`i, whose Family's property with approximately 1000' of Lawai Stream frontage now in danger of going dry in the presence of a 6" (six inch) pipe installed in 2013 by Alexander & Baldwin (A & B), I want to weigh in on the injustice to the environment once enjoyed by the Leones and many long-time residents because of the following actions:

- 1) Stopping mauka to makai natural flow of the Lawai Stream
- 2) Potentially devastating the entire Lawai watershed, its environment---habitat for stream species and surrounding flora and fauna

CWRM Staff, your team can bring environmental justice to Lawai Stream and its residents. In setting IIFS, consider recently closed sluice gates by diverters that would have created a temporarily restored flow not seen since the 2013 installed pipe/modification. Public Trust waters require protection by you, our Public Trust employees!

Cultural and spiritual practices, recreational uses and aesthetic needs are values we ALL thrive upon. Water Is Life!
RESTORE THE LAWAI STREAM!

Sharon Goodwin
Wailua Homestead, Kaua`i


6.0 Jolleen & Kalani Abreu

From: [Sweetie](#)
To: [DLNR.CW.DLNR.CWRM](#)
Cc: [Kalani Abreu](#)
Subject: Testimony: Instream Flow Standard for the Hydrologic Unit of Lawai
Date: Tuesday, November 12, 2019 9:19:57 AM

Aloha Commission on Water Resource Management,

We are in opposition to the continued diversion of water from Lawai stream.

My name is Jolleen Abreu and we are property owners in Lawai Valley on Lawai stream. Our properties have been in our family since the early 1900's when my husband's great grandfather came here from Madrid, Portugal. These properties were part of our families homestead. On them they made an honest living; they farmed, raised cattle, produced dairy and raised hogs. The stream has always been an important part of this process and our right as owners to use.

Over the years, we have seen the stream change. The flow is now a trickle except for when there is heavy rain. When a flood comes, it is detrimental to the natural flow of the stream and erodes the stream bank significantly. I believe this occurs because you continue to allow others to take our natural waters and divert them. You are allowing them to take our stream waters and use them else where but when there is a heavy rain coming, they open the dam and don't take the water. Leading our properties to take the flood. This is dangerous and causes damage to the natural stream banks. This is in no way a benefit to us as property owners. Why do they get to pick and choose how much water they want and when they want it and then allow us to flood unnaturally? This is not a natural process and should not be allowed. Our grandfather, Walter Abreu fought for his right as a land owner to get water put back into the stream. There should be a pipe running from their pipeline back to the stream for this.

We grow food with this water, our children learn about water resources here at this stream, they catch guppies at this stream, they eat prawns and they have taken an oath to take care of and clean this stream.

If your job is to protect our natural water resources then I urge you to hear our testimony with open hearts and to see how your decisions will affect the land and generations to come. Please help my children and the next generations to be able to live, learn and grow on our property.

Please feel free to contact us at [REDACTED] should you have any questions or concerns.

Mahalo,

Jolleen & Kalani Abreu

7.0 Ned Leone

From: [Ned Leone](#)
To: [DLNR,CW,DLNRCWRM](#)
Subject: Lawai Stream, Kauai Testimony
Date: Monday, December 2, 2019 8:50:22 AM
Attachments: [image001.png](#)
[image003.png](#)
[image002.png](#)

December 2, 2019

Aloha Suzanne Case & Commissioners:

Testimony for Lawai Stream, Kauai

This testimony is offered On behalf of Lawai Stream. I feel it is my responsibility to let CWRM know some facts that are not in their draft. Lawai Stream is being choked and fed through a small pipe. It needs your HELP.

I have spent most of my life living, raising a family, farming, tending to the land & stream in the Ahupua'a of Lawai. We have lived on our farm in Lawai Valley that has approximately 1000 ft. of Lawai Stream with 3 long deep ponds running through it.

I have seen the stream just about every day for over 43 years and I have seen many changes. My children caught O'opu, Opae and prawns. They played in a boat going up and down the stream. The stream was healthy, water flowed 24/7 and fluctuated with the upper valley rains.

From my observation of Lawai Stream there has been two times the natural flow was removed. First, in the late '80s to early 90s when concrete was added to the top of the 1925 "low, rock wall" dam without a permit. The second time in 2013 when CWRM gave a sight unseen approval to "repair" what was described as erosion when in fact the downstream owners, the cowboys, dug around the unpermitted, changed dam to maintain the natural stream flow for their cows.

The 1925 "low rock wall" dam that was registered with the State was semi eco-friendly and allowed water to flow over it into Lawai Stream maintaining a natural flow as evident by the O'opu and other stream habitat. Later, when concrete was added to the top of the 1925 dam, it diverted 100% of the water. It was as if the stream had a lobotomy and the voice of the running water was removed from the valley. The shallow stream beds dried up & algae invaded the deep ponds. The ground on our farm cracked big time. Shortly after the addition on top of the 1925 dam the cowboys needed water for their animals so they dug around the raised dam and maintained the opening. Water flowed again. As the cowboys passed away the opening was slowly closed until there was only a trickle of water. Around the end of 2009 I took the time to find out what was happening to the stream's water or lack of water. I got permission from the land owner to cross his property to the dam. In 2010, I called CWRM and talked to Robert Chong to see if they were aware of what was happening with the water. (Between 2010 & 2013 we talked about four times.) He seemed like he was unaware of the changes in the dam. I also asked if it was against the law to move some rocks to allow water to go around the dam so water could flow downstream. He assured me I was not breaking any laws and it was State land & water. On 2/6/2013 the day they were going to pour concrete and close the opening, I called Chong and a message in his voice said he was no longer working there. I later found out that Chong signed the "repair" in 2012. The "repair" turned out to be a major modification of the dam diversion!

Where are the permits for the addition to the top of the 1925 dam??

Where are the documents to support the change from a water diversion for drip irrigation for 1003 acres of sugarcane per "The 1989 Registration of Stream Diversion Works and Declaration of Water Use" vs. water now being diverted to irrigate the corporation's 1200 acres of luxury homes, private golf course and a private 20 acre kayak fishing lake??

The "repair" in 2013 closed the dam's opening stopping the natural flow again removing the voice of the stream from the valley. The 2013 closure has devastated the whole watershed! The small pipe with holes in it and an end cap is the only source of water to feed and nourish about 7 miles of natural habitat from the dam to Lawai Kai (the ocean), the majority of the "8.76 miles" of

Lawai Stream and the water shed of Lawai Valley. When the water is low the pipe's holes get covered with leaves stopping the water flow. **It does not work!** It is a death sentence for the whole watershed and its habitat. Since 2013 the ground water level in the deep pond has dropped about 10-12" inches. The O'opu and Opae are gone. Not enough water flow and the water is too warm! per CWRM's IFS: Hydrologic Unit of Lawai (2050) **"Lawai Stream below the Lawai Ditch intake is consistently subject to high turbidity, high temperatures, and low dissolved oxygen due to reduced flows."** That means it is dying.

Today, the diversion takes more water than it did when it irrigated over a 1000 acres of sugar cane.

How can they take and store over 135 million gallons of water using just three of the existing eight reservoirs that receive diverted water from Lawai Stream? That water being taken and stored is one of the reasons that Lawai Stream is in this deplorable condition! This water is held in public trust. It is not intended for a corporation's private use. Lawai Stream is being diverted to a different watershed to profit a development while the approximately 7 miles of the 8.76 miles of Lawai Stream from the dam to the ocean is dying from lack of water!

It is time for CWRM to live up to its Motto "Ke Kahuwai Pono". You are the guardians of the stream Mauka to Makai. Per the State Water Code: Water is held in a public trust and it is CWRM's responsibility to protect its health and the habitat of our streams. It is not for corporations' profit and greed.

-

Other Concerns

The 2013 "repair" is draining the water table of Lawai Valley's watershed!

Lawai Ditch-Diversion throw away is also on our property. Up until about six months ago when the upper valley rained the throw away ditch would run for days even weeks dumping mud ridden water back into the stream, while the stream from the dam to the throw away ditch (about ½ mile) would be nearly stagnate.

Since the 2013 so called "repair" the Invasive vegetation in the stream has increased tenfold without the natural flow.

CWRM's draft shows a medium flow at 1.77 mgd & the 1989 registration shows 3 mgd above dam?

I would also like to point out that the graph in your draft that shows 1.77 mgd is showing a much greater flow than normal since the 2013 "repair" due to them closing their control gate and allowing the water to flow over the dam for this study. It is strange that shortly after the fact gathering meeting the flow was lowered to average about 1.2 mgd and the water level has dropped about 3", even with all the rain we have been getting.

With eight reservoirs being used for their luxury home development and one being a 20 acre fishing lake, it makes me wonder if the other reservoirs will also become private water features for their exclusive owners.

Lawai Stream water stored for private use and control:

Hanini reservoir holds	14 mg	
Kaupale reservoir	73 mg	(decommissioned) and still can be used
Kumano reservoir	49 mg	
Aepoekolu reservoir	?	(decommissioned) and still can be used
Huinawai reservoir holds	?	
Aepoekolu	?	

Aepo	?
Aepoeka	?
Total million gallons	???

Plus what % is lost to leaks, evaporation, seepage, waste and just bad management? All this while Lawai Stream is deprived of its life giving source.

Lawai Stream needs to have a natural flow reinstated!

CWRM needs to take control of our streams and not let the corporations have the control as they are no longer farmers. They are now developers and they do not own the water!

Ned Leone, a concerned citiZen

This photo of Lawai Kai was taken just 20 years before the dam diversion. Now the stream dose not even reach the ocean.



at 1905. The small house to the right is the Queen Emma cottage after it was lowered over the cliff

This pipe is the only source of life giving water for approximately 7 miles to the Lawai Kai/ocean.



This photo shows the “repair” closure on the right and the addition on top of the 1925 registered dam.



References:

CWRM IFS: Lawai Stream, Kauai

Instream Flow Standard: Hydrologic Unit of Lawai (2050):

<https://dlnr.hawaii.gov/cwrmsurfacewater/ifs/lawai-2050/>

Mike Kido: Habitat Assessment of lower Lawai Stream, Kauai:

<https://ntbg.org/sites/default/files/generaluploads/lkbiologicalhabitatassessmentlowerlawaistreamjun07.pdf>

“Originally, the diversion dam consisted of a low rock wall within the stream...” per 7/26/2013 email from DLNR chair William Aila’s Factual Background

8.0 Yolanda Leone

From: [Yolanda](#)
To: [DLNR.CW.DLNRCWRM](#)
Subject: Testimony for Lawai Stream, Kauai
Date: Monday, December 2, 2019 9:17:41 AM

December 2, 2019

Re: Lawai Stream, Kauai

Aloha Commissioners of Water Resource Management:

I grew up in Manoa Valley with Manoa Stream as my backyard. We swam, fished and spent hours there. I was thrilled years ago when we found our home in Lawai which reminded me of my childhood. From my house I watched my children play in the stream much the same way as I did many years ago. They fished for o'opu, opae, crayfish and prawns. We saw catfish and even bass. The kids floated around in our small boat and enjoyed many hours there. My older grandchildren experienced this lifestyle but not my younger grandchildren. Today, the o'opu, opae and crayfish are gone and now the water is too shallow for the boat. Auwe.

So many things have changed in Lawai Stream. This habitat that once had a variety of life is diminished. The sound of water flowing is gone. In times of low rainfall, the stream turns green with algae and the bottom cannot be seen. Weeds get thick. Debris start piling up in the stream as the cleansing of running water is gone, a dangerous situation for future flooding. When there are big rains, the diversion continues to take the water at the dam and the "wasted" water is dumped back in the stream in at least 2 runoffs, one of which goes through our farm. Why not control the taking of the water at the dam so the natural slow cleansing of the stream can take place?

What are we doing? It is said 'we learn from our past', and yet the past is overlooked so we can continue to do the 'wrong thing for the wrong reasons'. When our natural resources is taken and miss-used we often find out too late the consequences we are then forced to face.

Once we were islands where agriculture was our main source of income. Water was important to its success and prosperity which made it important for our families' survival. Today, agriculture is no longer the primary source of our economy and survival. And yet, water is still taken under the pretense of use for agriculture. Why? Who continues to take this water? Does the taking benefit all the people or just a few? Who is benefiting from this taking? Who is giving the permission to take our water from its natural path?

In 1987 the State Water Code was written to address the taking of water and yet little is being done to uphold this code. Why do residents have to fight to do the right thing and have this resource returned when we pay people to do that job? When can we see our rivers and streams restored to their natural flow? Queen Liliokulani was very wise when she recognized that our water belonged to all the people and left it in the 'public trust' for all the people now and of the future.

Aloha,

Yolanda Leone

Lawai Valley, Kauai, Hawaii

Ps. Regarding other rivers and streams in our island. I have a belief the money spent in trying to invest in hydropower is of low value. If the same investment is made to make photovoltaic available to all household at a reasonable cost more electricity could be generated at a much lower cost and lower upkeep. Our focus on renewable energy needs a new path. Depend more on the sun's renewable energy and give life back to rivers and streams.

9.0 Mary Rocca

From: [Mary Rocca](#)
To: [DLNR.CW.DLNRCWRM](#); [Strauch, Ayron M](#)
Cc: [Bridget Hammerquist](#); [Eric Grigsby](#)
Subject: comments to CWRM re : Lawai Stream, Kaua'i,
Date: Wednesday, December 4, 2019 6:36:38 AM
Importance: High

Dear members of the Commission on Water Resource Management,

We are writing to request that you delay both the comment period, as well as any action regarding setting the minimum Instream Flow Standard for Lawai Stream in Southeast Kauai. As you know, the USGS (United States Geological Survey) is engaged in a study of "Low-Flow Characteristics for Streams in Southeast Kauai, Hawaii" which specifically includes a study of Lawai Stream. That study is not complete.

Ayron Strauch, the state hydrologist for CWRM, acknowledged that the USGS study needs to be complete before "any action can be made by CWRM." The purpose of the USGS study is to determine how much water flows regularly in the stream above the dam diversion as basic data from which to determine a minimum instream flow standard for the stream below the dam.

It is hard to understand why final comments on Lawai Stream are due to the State on December 9, even though the USGS work is not complete. Several of those who testified on October 28 requested that no action be taken to set the instream flow standard until the required information is available. That request should be honored, and information from the fully completed USGS study - which cost tax payers \$795,000.00 - should be shared with all those interested prior to closing final comments, and most certainly prior to the Commission making an informed decision on this important stream.

A& B is looking to sell the Kukui'ula Development in Poipu within the next few years, and their desire to increase their profit on the sale by securing water rights for a 20 acre fishing lake and golf course and ag at the development should not precipitate the State to rush the process and act prematurely. The environmental health of our beautiful island should take precedence over the needs of a development serving only a small number of people on our island. (We are members of the Club at Kukui'ula, so please understand that I can see both sides of this - and the environment should win this one).

Thank you for your patience in waiting for the necessary information, and for the good work you do for our beautiful State of Hawai'i.

Sincerely,

Mary Rocca
Eric Grigsby, MD

Mary Rocca, DMD, MBA

10.0 Polli Oliver

From: [Polli Oliver](#)
To: [DLNR.CW.DLNRCWRM](#)
Subject: [EXTERNAL] USGS Study on Lawai Stream
Date: Thursday, December 5, 2019 11:13:52 PM

To Whom it May Concern:

I am writing in regard to the request for final comments on Lawai Stream and the proposed Instream Flow Standard Assessment. As you know United States Geological Survey is engaged in a study of "Low-Flow Characteristics for Streams in Southeast Kauai", including the study of Lawai Stream. This costly study is not complete and it should mandatory that it be completed prior to any action being taken and the required information is available in order to set the instream flow standard. There are many in this area, and on the entire island and even in the State, that are aware of this situation and who feel very strongly about this issue.

Personally, I am deeply concerned about the seemingly obvious corporate use of the diverted waters of Lawai Stream. It is inappropriate and dishonest for the water, which is not OWNED by anyone, to be diverted and used by a special interest group and thus depriving others who are deserving of the use of the waters.

Please do your job and conscientiously take no action regarding this issue until the USGS work is complete.

Mahalo,

Polli Oliver

Koloa resident

11.0 Koa Young

From: [Koa Young](#)
To: [Hirokawa, Ian C](#); [DLNR.CW.DLNRCWRM](#)
Subject: [EXTERNAL] Lawai Stream Diversion testimony
Date: Friday, December 6, 2019 5:35:23 PM

I Koa Young, or Poipu Kauai am against the Lawai Stream diversion, the Kukuiula development is taking too much water and it is not returning the flow back to the stream how the Auwai did, this is causing those along the natural stream to suffer economically, such as farm land that was there much longer than the recent Kukuiula community, and culturally and was a part of our lives until it became stagnant due to the diversion. The diversion is illegal and without the proper permitting and studies and only serves a golf course.

Koa Young

12.0 Renee Rosemark Harper

From: [Renee Rosemark Harper](#)
To: [DLNR.CW.DLNRCWRM](#)
Subject: [EXTERNAL] Lawai Stream
Date: Friday, December 6, 2019 7:05:54 PM

Please help the residents of Kauai to protect LawI stream. Why is always seems that the big corporations are allowed to "steal" our water by illegal use of dams and other diversions. Kukui'ula will take this water and it will be used to help them sell more homes for millionaires! Kauai is already overcrowded and the natural beauty and our streams are being destroyed by over development. It is time to protect the aina and say no to these water diversion tatics!

Mahalo,
Renee Rosemark Harper
Lawai

13.0 Aaron McKnight

From: [Aaron](#)
To: [DLNR.CW.DLNRCWRM](#)
Cc: [aaron](#)
Subject: [EXTERNAL] Lawai Stream (2050) Testimony
Date: Monday, December 9, 2019 12:50:29 PM

Aloha, below is my Lawai Stream Testimony
Thank you
Aaron and Heather McKnight [REDACTED]
[REDACTED]
Lawai, HI 96756

Testimony Lawai Stream 12/2019

I grew up on the south side of Kauai playing in Lawai Stream and Waikomo Stream fishing for prawns and just doing kid things. Around 2013 my wife and I where able to purchase the last two lots on Lehelehe Road (tmk 26001015 1.45 acres and 26001017 7.49 acres) which are believed to be Kuleana Lands. Our plan as to build an off grid farm. Water and electric utilities are roughly about 0.8 miles away up Iwipoo Rd. Lawai Stream was essential in our plan for farming. Over 100 fruit trees where purchased ranging from citrus, avocados, exotic fruits, cacao, etc. Several years where taking clearing out the over burden of Hau bush and California grass that was taking over the ill flowing stream. Attempts to weekly irrigate fruit trees and five cows from the Stream where unsuccessful. As the pump would just dry up the Stream or just suck up muddy water. In the end we had to transport water in using 500 gallon trailer to protect our investment. Today we have an off grid house run on solar panels/batteries catchment as our source of water. This is the irony of living next to Lawai Stream. As our catchment feeds five cows, irrigation for our fruit trees and of course our new house. The streams flow is mostly stagnant and harbors mosquitoes carrying multiple diseases. In 2017 I was diagnosed with West Nile virus from mosquitos in the stagnant stream. Please restore the water flow to Lawai Stream to make it a viable stream that our families can enjoy and the native species can flourish.

Thank you
Aaron McKnight

Sent from my iPad

14.0 Fern Anuenue Holland

From: [Fern A Holland](#)
To: [DLNR.CW.DLNR.CWRM](#)
Subject: [EXTERNAL] Testimony in Regards to IFS for Lawai Stream
Date: Monday, December 9, 2019 4:43:52 PM

Dear Commission on Water Resource Management,

This testimony is in regards to the diversion of Lawa`i Stream and the setting of the Instream Flow Standard for the hydrologic unit of Lawa`i (2050).

I am deeply concerned about the excessive taking of water from the Lawa`i Stream and the downstream impacts associated with this diversion. Seven miles of Lawa`i Stream, between the dam and the ocean, are drying up and dying.

Prior to a low rock wall dam diversion, later modified in 2013 with a bank to bank concrete dam diversion, Lawa`i Stream was one of Kauai's more beautiful streams that watered the natural botanical gardens and nourished numerous taro patches.

When you hear the testimonies of the people that grew up along this stream and the resources that were there, and are no longer there, it is clear that something must be done. Subsistence gathering and fishing and recreation are all majorly impacted by the reduced water flow in this system. The entire system has been depleted and the next generation will not be able to access this resource and this is unacceptable.

In relation to the historical use of this water by McBryde Sugar Company, Ltd. McBryde filed a Registration of Stream Diversion Works and Declaration of Water Use on May 24, 1989 for the waters taken from Lawa`i Stream by diversion 812 and its ditch system. In their Declaration, McBryde Sugar identified the use of the water taken as being diverted to drip irrigate 1003 acres of sugar cane.

However, according to the Water Code, adopted in 1988, all diverters were required to maintain the status quo of every stream diversion, unless they applied to CWRM for an alternate permit. HRS section 174c-57 specifically required that if the use or quantity changed, a new application and permit had to be obtained by the diverter.

McBryde Sugar ceased operations in 1996. On page 51 of the CWRM IFS, the State reports that after 1996, the Lawa`i Stream diversion was operated by McBryde Resources Inc., a wholly owned subsidiary of A&B. The problem is that McBryde Resources Inc. was not formed until 2011. A bigger problem is that sugar irrigation stopped in 1996, and while the state reports that A&B continued to use the water to irrigate its development, there is no confirmation of that report. Even the CWRM IFS refers to the waters diverted as having "the capacity to support Kukui`ula development." CWRM doesn't offer any evidence of how the water taken has been used since sugar and McBryde Sugar Co. ended in 1996, as there was no new Water Use Declaration filed after 1989.

Therefore, McBryde Sugar and McBryde Resources Inc., an unrelated company that just happens to use the name McBryde and operates the diversion taking water from Lawa`i Stream even though they have never filed an application nor have they received a permit for the water they continue to take. This is seriously concerning.

In fact, A&B, owner of McBryde Resources Inc., recently issued a \$19 million municipal bond offering and stated that they have all the water they need for Kukui`ula development from sources other than the earthen reservoirs which are currently being used to bank and hoard water from Lawa`i Stream. In their bond offering, A&B states that they warrant the representations made as true and claim not to need any of the water diverted from Lawa`i Stream for Kukui`ula Development Company as the sources of water that are "in excess" of what they need, come from reservoirs and wells not fed by the Lawa`i Stream diversion and ditch system:

“The Developer has completed approximately 75% of the required and planned major infrastructure necessary for the development of the entire Kukui`ula project, including the portions thereof that are outside of the District and the portions that are Within the District but are exempt (or expected to be exempt) from the Special Taxes such as the golf course, clubhouse, spa, farm and lake. Such infrastructure includes both on and offsite infrastructure required to serve the development including an extensive offsite water system (including wells, storage tanks and transmission lines and more specifically, the Piwai Wells, Paanau Reservoir, and Monuhonuhonu Reservoir) with a capacity well in excess of the needs of Kukui`ula itself, traffic improvements...”, page 35 Kukuiula Development \$19 million municipal tax exempt bond offering.

CWRM should not be setting an IFS for Lawa`i Stream, as there is no proper application nor approval for the waters currently being diverted. The off-stream by A&B through a newly formed McBryde Resources Inc. is not documented and is not clear. Whatever the use, it is not one of the protected Public Trust doctrine uses and therefore proper application and a specific Use Declaration is mandatory. HRS section 174c-57, a law that embodies and is intended to enforce the Hawaii State Constitution's protection of our streams.

The USGS (United States Geological Survey) is engaged in a study of "Low-Flow Characteristics for Streams in Southeast Kauai, Hawaii" which specifically includes a study of Lawa`i Stream. That study is not complete. Even the state hydrologist for CWRM, Ayrton Strauch, acknowledged that the USGS study had to be complete before "any action can be made by CWRM." Seeing that the purpose of the USGS study is to determine how much water flows regularly in the stream above the dam diversion as basic data from which to determine a minimum instream flow standard for the stream below the dam.

No action should be taken to set the instream flow standard until the required information is available. The State partnered with USGS on a study that has cost tax payers \$759,000.00. The State should absolutely not rush the process and act prematurely to help A&B secure water rights for a 20-acre fishing lake, golf course and ag use for its build out of Kukui`ula Development in Poipu.

Thank you for accepting this testimony and doing what is right for Lawa`i.

Fern

Fern Anuenue Holland BSc

Ecology & Environmental Scientist

Kapa`a Kaua`i Hawai`i

15.0 Eileen Kechloian

From: [Eileen Kechloian](#)
To: [DLNR.CW.DLNRCWRM](#)
Subject: [EXTERNAL] Lawaii Stream Diversion 812
Date: Monday, December 9, 2019 4:45:05 PM

Chair Suzanne Case and ^[1]~~SEP~~ Commissioners on Water Resource Management
E-mail: dlnr.cwrm@hawaii.gov
Facsimile: (808) 587-0219
Mail: Commission on Water Resource Management
State Department of Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96809

Subject: Comment on the Draft Instream Flow Standard Assessment Report, Island of Kauai, Hydrologic Unit 2050 Lawai
Lawaii Stream Instream Flow Standards as it relates to the Diversion for the Developer, A&B Properties and it's subsidiary McBryde Resources

Testimony of Eileen Kechloian:

It is imperative that no decision be made until all the available information needed to make a valid decision is acquired and taken into consideration. This includes but is not limited to the following:

I. There is substantive information that USGS will be providing in their final report on instream flow standards.
II. On May 3, 2017 Judge Randal G.B. Valenciano in the Fifth Circuit Court of Hawaii found that the environmental review process had been triggered by Hawaii Revised Statutes Chapter 343. The Judge revoked all prior approvals issued to or obtained by Hawaii Dairy Farms from government agencies. He, also, found that "The EIS cannot be done while decisions are being made. An EIS prepared after the decisions are made is post hoc rationalization, does not provide information to decision-makers, and is not preferred, according to the Hawaii Supreme Court." An EIS must be done before all long term leases are allowed. (Please note the law does not state an EA but rather an EIS). A definitive InStream Flow Standard based on an unpermitted long term diversion (812) must be done without the diversion or it goes against the Supreme Court and will be found lacking and will be set aside as invalid.

III. HRS Code 174C Hawaii Water Plan

"c) To prepare the water resource protection and water quality plans, the commission shall:

- (1) Study and inventory the existing water resources of the State and the means and methods of conserving and augmenting such water resources;
- (2) Review existing and contemplated needs and uses of water including state and county land use plans and policies and study their effect on the environment, procreation of fish and wildlife, and water quality;" The aforementioned study may include a Chapter 343 triggered EIS. The fact the Lawaii Stream prior to the diversion comes from State Land and A&B, parent company of McBryde Resources, diversion administrators, has in 2012 and currently have used Government funding to raise money via Kaua'i County Bonds for infrastructure including water facilities in excess of need and transmission thereof. (HRS 171-58c)
- (3) Study the quantity and quality of water needed for existing and contemplated uses, including irrigation, power development, geothermal power, and municipal uses;
- (4) Identify rivers or streams, or a portion of a river or stream, which appropriately may be placed within a wild and scenic rivers system, to be preserved and protected as part of the public trust. For the purposes of this paragraph, the term "wild and scenic rivers" means rivers or streams, or a portion of a river or stream of high natural quality or that possess significant scenic value, including but not limited to, rivers or streams which are within the natural area reserves system. The commission shall report its findings to the legislature twenty days prior to the convening of each regular legislative session; and
- (5) Study such other related matters as drainage, reclamation, flood hazards, floodplain zoning, dam safety, and selection of reservoir sites, as they relate to the protection, conservation, quantity, and quality of water." CWRM must do discovery on the underground water reservoirs that are earthen and linked together, where should one reservoir fail it can domino into failure of the other earthen, underground reservoirs endangering the lives of the people living nearby.

“(d) The water resource protection plan shall include but not be limited to:

- (1) Nature and occurrence of water resources in the State;
- (2) Hydrologic units and their characteristics, including the quantity and quality of available resource, requirements for beneficial instream uses and environmental protection, desirable uses worthy of preservation by permit, and undesirable uses for which permits may be denied;
- (3) Existing and contemplated uses of water, as identified in the water use and development plans of the State and the counties, their impact on the resource, and their consistency with objectives and policies established in the water resource protection and water quality plans;
- (4) Programs to conserve, augment, and protect the water resource, including plans for stormwater management, reuse, reclamation, and remediation; and
- (5) Other elements necessary or desirable for inclusion in the plan.

Thereafter, the commission, in coordination with the counties and the department of health shall formulate an integrated coordinated program for the protection, conservation, and management of the waters in each county based on the above studies. This program, with such amendments, supplements, and additions as may be necessary, shall be known as the water resource protection and water quality plans.” CWRM is charged with coordinating with the County of Kaua’i and the Department of Health, this is stated again in the Public Trust Doctrine, where it encompasses all government agencies and opens CWRM to liability. It must be done before any approvals. This charge is repeated in “(o) In formulating or revising the plans, each county and the commission shall consult with and carefully evaluate the recommendations of concerned federal, state, and county agencies.”

174C goes on “(k) The commission shall give careful consideration to the requirements of public recreation, the protection of the environment, and the procreation of fish and wildlife. The commission may prohibit or restrict other future uses on certain designated streams which may be inconsistent with these objectives” This does not include water diverted for a private members-only lake, golf course or private members-only garden!

174C Part VI Instream Uses of Water:

“(E) After giving notice of its intention to set an instream flow standard, the commission or other agencies in participation with the commission shall investigate the stream. During the process of this investigation, the commission shall consult with and consider the recommendations of the department of health, the aquatic biologist of the department of land and natural resources, the natural area reserves system commission, the University of Hawaii cooperative fishery unit, the United States Fish and Wildlife Service, the mayor of the county in which the stream is located, and other agencies having interest in or information on the stream, and may consult with and consider the recommendations of persons having interest in or information on the stream.” This warns CWRM that they must wait for USGS findings! And further consult with multiple outside sources of information and opinion. “ In formulating the proposed standard, the commission shall weigh the importance of the present or potential uses of water from the stream for noninstream purposes, including the economic impact of restriction of such uses. In order to avoid or minimize the impact on existing uses of preserving, enhancing, or restoring instream values, the commission shall consider physical solutions, including water exchanges, modifications of project operations, changes in points of diversion, changes in time and rate of diversion, uses of water from alternative sources, or any other solution;” CWRM must consider uses of water from other sources and consider a change in the diversion rate. This is extremely important as the developer, A&B in their latest County of Kaua’i, Kukuiula Development Project Special Tax Revenue Bonds, Series 2019 brags about the fact that they have “extensive offsite water system with a capacity well in excess of the needs of Kukui’ula itself”. A&B , parent company of McBryde Resources, the unpermitted administrator of the diversion, has multiple water resources and is water banking the ater from the Lawaii Stream diversion for possible future developments. (Possibly the proposed “Second City” that is agricultural land now but A&B got a brand new, unrecognized as such, land use of “Transitional” put into Kauai’s County Plan. This land is to the west of Kukui’ula.)

HRS 174C Part VI goes on to say,

- “(3) Protect stream channels from alteration whenever practicable to provide for fishery, wildlife, recreational, aesthetic, scenic, and other beneficial instream uses;
- (A) The commission shall require persons to obtain a permit from the commission prior to undertaking a stream channel alteration; provided that routine streambed and drainageway maintenance activities and maintenance of existing facilities are exempt from obtaining a permit;

The Lawaii diversion was increased by the addition of concrete onto the low rockwall. This was not permitted and CWRM should make the sure it is removed and stream flow returned. It is an illegal addition. Instream Flow Standards need to be set after such removal not before based on HRS174C Part VI. Further on in 174C it states,;

“[§174C-93] Permits for construction or alteration. No person shall construct or alter a stream diversion works, other than in the course of normal maintenance, without first obtaining a permit from the commission. The commission may impose such reasonable conditions as are necessary to assure that the construction or alteration of such stream diversion works will not be inconsistent with the general plan and land use policies of the State and the affected county. Nothing in this section shall be construed to be inconsistent with part IV.

A person proposing to construct or alter a stream diversion work shall apply to the commission for a permit authorizing such construction or alteration.”

IV. The Public Trust Doctrine

CWRM may want to read the below Supreme Court Decision in order to not make a large mistake in setting Instream Flow Standards.

"5. Additionally, under the majority's analysis, an agency may be reluctant to issue any type of regulatory clearance until it has assurance that all other regulatory concerns have been resolved. In other words, a permit may be indefinitely delayed because no agency is willing to act first in approving the project, since doing so without assuring that all applicable requirements and regulatory processes relating to the public trust are complied with could constitute a violation of that agency's public trust duties". - See more at:

https://urldefense.com/v3/_http://caselaw.findlaw.com/hi-supreme-court/1659209.html*sthash.5dNvOex2.dpuf_;!w!!LIYSdFfckKA!kVaJATUKHKV-6EOxP9tBaZ7Uj3DhoyHhUvji3C2pC9R5rXOFLinFfb2qj1i9dVSNO-ES ^[1]_[SEP]The link above will Take you to the full decision by the Supreme Court.

"22. Article XI, section 1 of the Hawai'i Constitution provides: For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii's natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State. All public natural resources are held in trust by the State for the benefit of the people."

- See more at: https://urldefense.com/v3/_http://caselaw.findlaw.com/hi-supreme-court/1659209.html*sthash.5dNvOex2.dpuf_;!w!!LIYSdFfckKA!kVaJATUKHKV-6EOxP9tBaZ7Uj3DhoyHhUvji3C2pC9R5rXOFLinFfb2qj1i9dVSNO-ES

Mahalo for taking this case and Public Trust Doctrine in to consideration before setting IFS.

V. County Of Kaua'i Special Tax Revenue Bonds , Series 2019 Kukui'ula Development Project

Page 49 of 304 reads:

“The information included below has been obtained from the developer. Neither the County nor the Underwriter has independently verified such information, and neither of them (i) can assure that is is accurate and complete or (ii) makes any representations as to its accuracy or completeness. General As discussed abover the Developer has completed the majority of the major infrastructure necessary for the development of the entire Kukui'ula project, including portions thereof that are outside of the District and the portions that are within the District but are exempt from the Special Taxes such as the golf course, clubhouse, spa, farm and lake. Such infrastructure includes both on and offsite infrastructure required to serve the development including an extensive ofsite water system (wells, storage tanks and transmission lines) with a capacity well in excess of the needs of Kukui'ula itself” The excess water referred to here is excess after all the water needs of a 18 hole golf course, a members-only farm,(referred to as “a gentlemen's up-country farm, where members can get fresh produce” page 39 of 304) and a private man-made lake of diverted Public Trust water! This grandiose boast is made multiple times in this 304 page document! Also, in this document on Page 42 of 304, it states, “In 2004, the County approved a Developer requested zoning of 1,002 acres of the property to provide for the development of 1500 dwelling units (including up to 750 time share units and “Transient Vacation Rentals,” a designation which enabled use of residences selected by the developer as vacation rentals..” Water for “Transient Vacation Rentals” and timeshare units is not a protected right in the Public Trust Doctrine! But, providing water to the Hawaiian people, the fish, the environment, endangered species and future generations is.

We, the people, are watching to see how CWRM handles their “Public Trust” duties.

Mahalo,
Eileen Kechloian
Koloa, Kaua'i

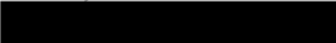
16.0 Larry & Joan Heller

From: [larry heller](#)
To: [DLNR.CW.DLNRCWRM](#)
Subject: [EXTERNAL] Testimony on Lawai Stream
Date: Monday, December 9, 2019 5:46:27 PM

Commission on Water Resource Management,
We are against granting any further diversions of Lawai stream for A&B's real-estate developments. Because of...

1. McBryde Sugar Company, Ltd. filed a Registration of Stream Diversion Works and Declaration of Water Use, May 24, 1989 for the waters taken from Lawai Stream by diversion 812 and its ditch system. In their Declaration, McBryde Sugar identified the use of the water taken as being diverted to drip irrigate 1003 acres of sugar cane.
2. According to the Water Code, adopted in 1988, all diverters were required to maintain the status quo of every stream diversion, unless they applied to CWRM for an alternate permit. HRS section 174c-57 specifically required that if the use or quantity changed, a new application and permit had to be obtained by the diverter.
3. McBryde Sugar ceased operations in 1996. On page 51 of the CWRM IFS, the State reports that after 1996, the Lawai Stream diversion was operated by McBryde Resources Inc., a wholly owned subsidiary of A&B. The problem is that McBryde Resources Inc. was not formed until 2011. A bigger problem is that sugar irrigation stopped in 1996, and while the state reports that A&B continued to use the water to irrigate its development, there is no confirmation of that report. Even the CWRM IFS refers to the waters diverted as having "the capacity to support Kukuiula development." CWRM doesn't offer any evidence of how the water taken has been used since sugar and McBryde Sugar Co. ended in 1996, as there was no new Water Use Declaration filed after 1989.

Thank you for your attention to this matter.

larry heller & Joan Heller
Lawai, Kauai


17.0 Bridget Hammerquist

From: [Bridget Hammerquist](#)
To: [DLNR.CW.DLNR.CWRM](#)
Subject: Lawai Stream Comment 12-9-2019
Date: Monday, December 9, 2019 6:33:36 PM
Attachments: [Lawai Stream Comment 12-9-2019.pdf](#)
[DLNR Director William Aila, 7262013 letter](#)

Aloha,

Please find attached our comment on the Draft Instream Flow Standard Assessment Report, Island of Kauai, Hydrologic Unit 2050 Lawai. Please call or email if you have any difficulty opening or receiving the attached documents.

Mahalo nui loa,

Bridget Hammerquist, President
Friends of Maha`ulepu, a 501(c)(3)
Kia`i Wai o Wai`ale`ale, Co-founder
friendsofmahaulepu.org
kjaiwaialeale@gmail.com
(808)742-1037

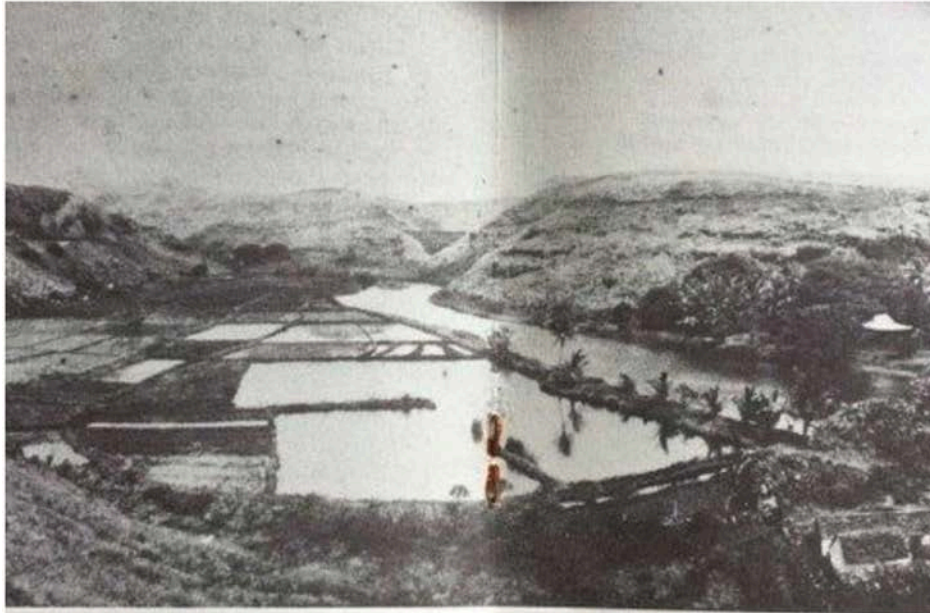
Chair Suzanne Case and
Commissioners on Water Resource Management
E-mail: dlnr.cwrm@hawaii.gov
Facsimile: (808) 587-0219
Mail: Commission on Water Resource Management
State Department of Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96809

Subject: Comment of the Friends of Māhā'ulepū and Kia'i Wai o Wai'ale'ale on the Draft
Instream Flow Standard Assessment Report, Island of Kauai, Hydrologic Unit 2050 Lawai

To Whom It May Concern,

Having reviewed the 63 page Draft Instream Flow Standard Assessment Report, there are several overarching concerns. The report details and describes many alternate sources of fresh water in the Lawai hydrologic unit. It is evident in section 3 of the report that there is an abundance of ground water with sustainable yields between 16 and 30 mgd. However, there is little or no consideration given to the potential for pumping from any of the available local ground water sources rather than continued harmful stream diversion without return to stream of origin and without permit or lease. There is also no payment being made to the State for the millions of gallons of water being taken every year. In its report, the State appears to assume that diversion of Lawai Stream needs to be continued. From all the facts gathered by the State, however, there is little support to preserve diversion 812 in the course of determining the IFS for Lawai Stream.

Specifically, Lawai Stream flowed and supported an abundance of vegetative and animal agriculture until its diversion by sugar in 1925. Even after its diversion and prior to the increase in the dam height by added concrete, there was continuous mauka to makai flow over the initial rock wall dam well into the 1980s. On October 28, 2019 at a CWRM fact finding meeting in Lihue, residents who have lived along Lawai Stream for generations testified to the taro farms, cattle ranches, macadamia nut orchards and other crops that were supported by mauka to makai flow that persisted even after sugar added the 1925 diversion.



at 1905. The small house to the right is the Queen Emma cottage after it was lowered over the cliff

Sometime around the adoption of the water code, McBryde sugar company personnel added concrete to the low rock wall dam, bank to bank, raising the height of the dam and impeding Lawai Stream flow and severely impacting the stream's ability to support its many users' operations per the testimony of many of the stream's residents. They testified to the ground on their property along the stream cracking and to complaints they made to CWRM. In fact, residents were unable to obtain documents to confirm that any permission had been given by CWRM to increase the dam's height. Rather, a CWRM Director told the resident that he could use self-help measures to restore the water flow that was critical for crops and livestock. In 2013, when residents asked why McBryde was pouring more concrete, DLNR Director, William Aila, responded explaining that McBryde was having to repair the "low rock wall" dam because there was too much erosion on one side of the dam. Mr. Aila referred to the Lawai Stream diversion as a "low rock wall" dam in 2013:

"Originally, the diversion dam consisted of a low rock wall within the stream extending from the western stream bank to the Lawai Intake Ditch on the eastern side of the stream." DLNR Director William Aila, 7/26/2013, copy attached

Based on the Director's letter, CWRM was unaware that the dam had been heightened sometime in the late 1980s, markedly reducing stream flow. There are no documents to support McBryde's addition of concrete on top of the low rock wall dam before 2013. In fact, the initial dam diverted

water for sugar cane irrigation. When the water code was enacted in 1988, McBryde Sugar Company was required to file a diversion and water use declaration. At the time the water was being taken for drip irrigation of sugar. In 1996, however, McBryde Sugar Company ceased operating and there was no sugar cultivated thereafter. There were no documents that could be obtained to confirm that McBryde ever informed CWRM of the change use for the water that continues to be taken, now by A&B, through its wholly owned subsidiary, McBryde Resources Inc.

Before any IFS can be proposed for stream flow below diversion 812, there should first be a clear understanding of all the off-stream users and uses with priority to stream flow preservation and other Public Trust uses before off-stream commercial use is permitted, particularly as, in the case of diversion 812, where the water is never returned to the stream of origin.

The water code requires State approval of all off-stream uses of surface water §§171-58a and 174c et seq. With regard to diversion 812, McBryde Sugar Co. filed their water use declaration for the Lawai Stream diversion May 24, 1989 documenting that the surface water taken from Lawai Stream was used for drip irrigation of 1,003 acres of sugar cane.

When that use ended and because McBryde Sugar Co. ceased operations, the successor user, A&B, should have filed a new water use application with CWRM to continue operating diversion 812, as required by HRS §174c et seq. Not only did the use for the water change but the operator changed. Both require a new filing for which there is no evidence. HRS §174c-57

“[HRS §174C-57] Modification of permit terms.

(a) A permittee may seek modification of any term of a permit. A permittee who seeks to change the use of water subject to the permit, whether or not such change in use is of a material nature, or to change the place of use of the water or to use a greater quantity of water than allowed under the permit or to make any change in respect to the water which may have a material effect upon any person or upon the water resource, shall make application pursuant to section 174C-51 in respect to such a change. Modification of one aspect or condition of a permit may be conditioned on the permittee's acceptance of changes in other aspects of the permit.

(b) All permit modification applications shall be treated as initial permit applications and be subject to sections 174C-51 to 174C-56”

This comment, in response to the State's fact gathering effort, offers that the following should also be taken into consideration before any IFS is proposed for the stream flow below diversion 812:

1. The USGS low flow study, which includes a study of Lawai Stream should be complete and its data released as CWRM had planned and previously committed to. “We are still waiting for the final USGS report to be completed in 2019 before any action can be made by CWRM.” See June 2018 CWRM email below

“Subject: Re: Lawai River 6/11/18

Date: Tue, 12 Jun 2018 12:58:42 +0000
From: Strauch, Ayron M <ayron.m.strauch@hawaii.gov>
To: Ned Leone [REDACTED], 'Ned Leone' [REDACTED], 'Hope Kallai' [REDACTED], 'Terrie Hayes' [REDACTED], 'Branch Harmony' [REDACTED], 'Kane Tiralde' [REDACTED], 'Bridget Hammerquist' [REDACTED], 'Don Heacock' [REDACTED], DaMate, Leimana K <leimana.k.damate@hawaii.gov>

Aloha Ned,
Thanks for the update. I really appreciated getting to see the stream at your property. If you're still willing, I hope to get a stream gage installed on Lawai Stream at your property in the coming months.

We are still waiting for the final USGS report to be completed in 2019 before any action can be made by CWRM. I will be back for stream measurements and to visit the stream near the botanical gardens later this year.

Mahalo,
Ayron

Ayron M. Strauch, Ph. D.
Hydrologist, Commission on Water Resource Management
Department of Land and Natural Resources
State of Hawaii
1151 Punchbowl St. Rm 227
Honolulu, HI 96813
808-587-0265
Ayron.m.strauch@hawaii.gov

2. When the contract was executed for the USGS CWRM low-flow study in May 2015, CWRM's documents acknowledged Kauai's limited fresh water supply and the need to conclude the study before off-stream uses were permitted, particularly for commercial development:

“April 29, 2015 Lihu'e, Kaua'i
Request to Authorize the Chairperson to Enter into Joint Funding Agreements with US Geological Survey To Conduct a Study on Low-Flow Characteristics for Streams In Southeast Kaua'i, Hawai'i
SUMMARY OF REQUEST:
Staff requests that the Commission on Water Resource Management (Commission) authorize the Chairperson to enter into multiple Joint Funding Agreements (J FA) with the U. S. Geological Survey (USGS) to conduct a study of Low—Flow Characteristics for Streams in Southeast Kaua' i, Hawai' i.
BACKGROUND:
Under the State Water Code (Code), Chapter 174C, Hawaii Revised Statutes (HRS), the Commission has the responsibility of establishing Instream Flow Standards (IFS) on a stream- by-stream basis whenever necessary to protect the public interest in the waters of the State. Early in its history, the Commission recognized the complexity of establishing IFS for the State's estimated 376 perennial streams and instead set interim IFS at “status quo” levels. These interim IFS were defined as the amount of water flowing in each

stream (with consideration for the natural variability in stream flow and conditions) at the time the administrative rules governing them were adopted in 1988 and 1989.

The Hawaii Supreme Court, upon reviewing the Waiahole Ditch Contested Case Decision and Order, held that such “status quo” interim IFS were not adequate to protect streams and required the Commission to take immediate steps to assess stream flow characteristics and develop quantitative interim IFS for affected Windward Oahu streams, as well as other streams statewide. The Hawaii Supreme Court also emphasized that “instream flow standards serve as the primary mechanism by which the Commission is to discharge its duty to protect and promote the entire range of public trust purposes dependent upon instream flows.”

The Commission is tasked with establishing instream flow standards by analyzing “the importance of the present or potential instream values with the importance of the present or potential uses of water for noninstream purposes, including the economic impact of restricting such uses.” While the Code outlines the instream and offstream uses to be analyzed, it assumes that hydrological conditions will also be analyzed as part of setting IFS. The complexity lies in the variability of local surface water conditions that are dependent upon a wide range of factors, including, but not limited to rainfall, geology, topology and human impacts, as well as the availability of such information.

In striving to fulfill the mandates of the Code and Hawaii Supreme Court, the Commission staff has proceeded to focus on priority areas in developing measurable instream flow standards. One such example is a study recently completed by the USGS, in cooperation with the Commission, on the Low-Flow Characteristics of Streams in the Lahaina District, West Maui, Hawai‘i (Scientific Investigation Report 2014- 5087). With this information, the Commission will be able to move forward in assessing the range of instream and non-instream uses in relation to specific hydrologic conditions. The history of large—scale sugarcane cultivation in Southeast Kaua‘i by Lihue Plantation, Grove Farm, Koloa Plantation, McBryde Sugar Company, and Olokele Sugar Company has left extensive and complex irrigation systems that continue to serve municipal, hydropower, and agricultural uses. Over the past several years, the Commission has received several complaints and inquiries for streams in the region including Wailua, Waikomo, Lawa‘i, and Hanapépe. Additionally, the USGS has worked with the Kaua‘i Department of Water consistently over the past two decades in assessing groundwater hydrology for the Southern Lihu‘e Basin. This combination of issues and work in Southeast Kaua‘i have made it ripe for the assessment of instream flow standards by the Commission.

On April 15, 2015, following initial discussions, USGS prepared the attached Joint Funding Agreement and Study Proposal (Exhibit 1).

SCOPE OF SERVICES AND FUNDING:

The attached study proposes a 4-year cooperative study of the main streams within eleven watersheds in Southeast Kauai. The objectives are to: 1) quantify the amount of water available under natural, low-flow conditions upstream of existing surface-water diversions; and 2) characterize the magnitude and frequency of low flows at selected sites downstream of diversions. The main streams included in this study are within the watersheds, or surface water hydrologic units, of Wailua, Hanama‘ulu, Nawiliwili, Puali, Hulé‘ia, Waikomo, Aepo, Lawa‘i, Kalaheo, Wahiawa, and Hanapépe (see page 12,

Exhibit 1). The study will run from June 1, 2015 to April 30, 2019. The total cost will be \$707,000.

USGS will undertake this study in five steps:

- 1) Conducting background research on existing surface water diversions, rainfall, groundwater, and surface-water data;
- 2) Conducting stream reconnaissance surveys to understand the general hydrologic conditions of streams;
- 3) Establishing low-flow partial records stations upstream from existing diversion intakes to quantify streamflow under natural, undiverted low-flow conditions;
- 4) Conducting seepage analyses to characterize gains and losses in streamflow; and
- 5) Preparing maps to be published as part of the report.”

The cost of the USGS CWRM study is \$759,000 and has currently been extended with the expectation it will be completed in the second quarter of 2020. Any proposal for an IIFS or an IFS prior to completion would be premature and definitely not protect stream health.

3. McBryde Sugar ceased operations in 1996. On page 51 of the CWRM IFS draft, the State reports that after 1996, the Lawai Stream diversion was operated by McBryde Resources Inc., a wholly owned subsidiary of A&B. The problem is that McBryde Resources Inc. was not formed until 2011, a law corporation with one employee. A bigger problem is the fact that sugar irrigation stopped in 1996, and while the state reports that A&B continued to use the water to “irrigate its development”, there is no confirmation of that report nor specifics as to what was being developed and where.

Many who testified October 28, assumed the water A&B/McBryde Resources Inc. continued to divert from Lawai Stream was used for building out Kukuiula development in Poipu. The State reports that one of the many earthen reservoirs A&B has been diverting the water is used for the developments golf course. This fact is also in dispute! In a recent \$19 million municipal bond offering, A&B stated that the water needed to support Kukuiula development comes from wells and reservoirs unrelated to diversion 812 and the Lawai Stream ditch system. A&B warrants the truths of the statements made in their bond offering and identifies reservoirs and a well as providing water “in excess” of that needed by Kukuiula development that are not connected with Lawai Stream. Based on their offering, the most that can be said is that A&B is diverting water to a series of earthen reservoirs unrelated to Kukuiula development which even CWRM reports has “the capacity to support Kukuiula development”, see IFS draft page 51, but CWRM falls short of providing specific information as to how A&B has used the Lawai Stream water to build out Kukuiula development. CWRM reports that the Aepeoka Reservoir waters the Kukuiula development private golf course. That fact is directly contradicted in the A&B bond offering. Aepeoka is only one of six active reservoirs being used to bank water taken from Lawai Stream for A&B. As seen in the quote below, A&B does not identify this reservoir as serving its private golf course. Nor does it name any of the other 7 reservoirs that receive water from Lawai Stream: Hanini, Huinawai, Aepe, Kaupale (decommissioned), Kumano, Aepealua, Aepokolu (decommissioned) and Aepeoka. The CWRM IFS draft does not contain any specific use or justification for the millions of gallons of water that have been removed from Lawai Stream via

diversion 812 for nearly a quarter century and A&B makes clear that it's not needed for Kukuiula development.

“The Developer has completed approximately 75% of the required and planned major infrastructure necessary for the development of the entire Kukui‘ula project, including the portions thereof that are outside of the District and the portions that are Within the District but are exempt (or expected to be exempt) from the Special Taxes such as the golf course, clubhouse, spa, farm and lake. Such infrastructure includes both on and offsite infrastructure required to serve the development including an extensive offsite water system (including wells, storage tanks and transmission lines and more specifically, the Piwai Wells, Paanau Reservoir, and Monuhonuhonu Reservoir) with a capacity well in excess of the needs of Kukui‘ula itself, traffic improvements...” page 35 Kukuiula Development \$19 million municipal tax exempt bond offering <https://www.stifel.com/Docs/MuniBond/Resources/ViewDocument/45570/6bc69516-1e33-4e7e-8315-8285b8f3141e>

4. In addition to the foregoing facts, FOM and Kia`i Wai `o Wai`ale`ale will be filling a water wasting complaint for the massive leaks associated with the Lawai ditch system. Residents testified to waters that flood Kaumuali`i Hwy and Oyama Rd.

5. Seven miles of Lawai Stream is dying. The State has failed in its duty to enforce the water code and has allowed a subsequent operator to continue surface water stream diversion for a different off-stream use without proper application or permit. The illegal take and waste, must be stopped. The State has been onsite and has seen the significant leaks from the Lawai stream diversion ditch system. There is no justification or legal support to consider or to establish an IFS before correcting this travesty.



Picture of pipe that is the only source of water for 7 miles below diversion, often blocked by mud and leaves



Lawai Stream Dam Diversion 812

Mahalo nui loa,

Bridget Hammerquist, President
Friends of Maha`ulepu, a 501(c)(3)
Kia`i Wai o Wai`ale`ale, Co-founder
friendsofmahaulepu.org
kiaiwaialeale@gmail.com



Fw: Hawaii's Land and Natural Resources

From : Yolanda <[REDACTED]>
Subject : Fw: Hawaii's Land and Natural Resources
To : [REDACTED]

Sun, Aug 04, 2013 09:51 AM

----- Original Message -----

From: DLNR.Chair@hawaii.gov
To: [REDACTED]
Sent: Friday, July 26, 2013 8:53 AM
Subject: Hawaii's Land and Natural Resources

Dear Mrs. Leone:

Thank you for contacting Governor Abercrombie and the Department of Land and Natural Resources (Department) to express your concern for the repair work to a diversion structure in Lawai Stream, Kaua'i, and your previous inquiry to Dean Uyeno of the State Commission on Water Resource Management ("Commission") staff.

A. FACTUAL BACKGROUND.

On August 1, 2012, Mr. Sean O'Keefe (Director, Environmental Affairs), Alexander & Baldwin, Inc. (A&B), emailed Mr. Robert Chong (CWRM) to a Request for Determination (RFD) whether a permit is required for maintenance work on an existing surface water diversion on Lawai Stream, Kaua'i. A&B provided a draft letter to the U.S. Army Corps of Engineers, requesting similar determination for Clean Water Act Section 404 permit requirement.

A&B described the situation as follows:

The Lawai Intake was constructed in 1925 to provide irrigation water to McBryde Sugar Company, Ltd. via the Lawai Intake Ditch and a system of irrigation reservoirs. Today, water diverted at the intake is provided to various agricultural users at the McBryde Agricultural Park and to Kauai Coffee Company for irrigation of crops. This diversion is the sole source of irrigation water for the agricultural park and for Kauai Coffee Company field 518. Water from the diversion is also used for irrigation by the Kuku'i'ula development, including at its plant nursery operation.

Originally, the diversion dam consisted of a low rock wall within the stream extending from the western stream bank to the Lawai Intake Ditch on the eastern side of the

stream. At some time in the past, unknown parties excavated a small portion of the western stream bank to allow water to bypass the diversion. Earlier this year, stormwater flows in the stream eroded away much more of the western stream bank such that a four foot gap now exists between the end of the dam and the stream bank. As a result, during normal stream flows the dam is now almost completely bypassed. It is therefore imperative that this maintenance work be completed as expeditiously as possible.

A&B proposes to extend the western end of the existing structure so that it again abuts against the western stream bank, consistent with its original design. We believe that this approach is preferable to using soil fill to restore the stream bank to its original configuration because the restored bank would remain susceptible to future erosion and because restoring the bank would require a greater amount of fill to be placed in the stream, and would pose a greater risk of water quality impacts, than would the proposed approach. The proposed design will not result in the drainage, degradation, or destruction of additional waters of the United States because it will occupy a smaller area in the stream bed than did the portion of the stream bank that has washed away. In addition, the proposed design will more readily accommodate a planned bypass pipe that intended to maintain the bypass flow that existed prior to the storm erosion while also providing for biological continuity in the stream.

On August 3, 2012, Mr. Chong (CWRM) responded that based upon the information provided,

[t]he Commission will not require a Stream Diversion Works Permit (SDWP) for the proposed project because A&B registered the Lawai Stream diversion with the Commission in 1989 and the maintenance of existing facilities is exempt from obtaining a permit from the Commission.

On February 6, 2013, Mr. Dean Uyeno (CWRM) received a field call from Kaua'i DOCARE Chief Francis Mission responding to a complaint by you (Yolanda Leone). You were on-site at the time A&B contractors were beginning to repair the diversion dam on Lawai Stream. DOCARE Officer Warren Tavares and you forwarded pictures of the work. Mr. Uyeno spoke to you on the phone later in the day, after A&B contractors left the worksite without having completed the work.

Mr. Uyeno explained that the work is considered repair and maintenance. No new permits were required. You insisted that the work is additional and should not be allowed. You asked what permit allowed the existing structure. Mr. Uyeno explained the State Water Code permit requirement (Hawaii Revised Statutes, §174C-93) and the Registration process (Haw. Rev. Stat. §174C-92). He emailed to you a copy of the Registration of Stream Diversion Works and Declaration of Water Use for the Lawai Stream Intake submitted by McBryde Sugar Co. on May 26, 1989.

On February 8, 2013, the CWRM staff received two emails from you asking for a

"current permit 'approval' for what is being done in the stream today. You also asked "[w]here are the past permits for this dam and how can I access it?" The first email copied William Aila, Jr., DOCARE Chief Francis Mission, Governor Abercrombie, Walter Ritte, Larry Dill (County Engineer), and Charles Wichman (National Tropical Botanical Garden). The second email copied Wanda Kau-Shibata (Governor's Kauai Liaison), KHON2 Action Line, and Carroll Cox (EnviroWatch).

Mr. Uyeno briefed Ms. Kau-Shibata and explained that the Commission does not require a *new* permit for maintenance of an *existing structure* where no expansion is proposed.

On February 10 - 13, 2013, five additional emails were received from you, Elaine Dunbar, David Sutton, Jeffrey Vesci (Kauai Rising), and Linda Masterson (Kauai Rising).

On February 19, 2013, you sent an email to Governor Abercrombie, and copied William Aila, Jr., William Tam, DOCARE Chief Francis Mission, Katie Ersbak (Deputy Secretary) and Dean Uyeno, stating that "[i]t has been 2 weeks since they started and completed work on the damming/diversion of water in Lawai Stream. The Commission on Water Resource Management still have not responded to my calls or emails."

B. ANALYSIS

The State Water Code addresses stream diversion works in two sections.

Hawaii Revised Statutes, §174C-92 (1987). **Registration of existing stream diversion works.**

Any person owning or operating a stream diversion works within or outside of a water management area shall register such work with the commission. Registration shall be on the forms provided by the commission. Reporting requirements on the registration forms shall be reasonable. [L 1987, c 45, pt of §2]

Hawaii Revised Statutes §174C-93 (1987). **Permits for construction or alteration**

No person shall construct or alter a stream diversion works, other than in the course of normal maintenance, without first obtaining a permit from the commission. The commission may impose such reasonable conditions as are necessary to assure that the construction or alteration of such stream diversion works will not be inconsistent with the general plan and land use policies of the State and the affected county. Nothing in this section shall be construed to be inconsistent with part IV.

A person proposing to construct or alter a stream diversion work shall apply to the commission for a permit authorizing such construction or alteration. The application shall contain the following:

- (1) Name and address of the applicant;
- (2) Name and address of the owner or owners of the land upon which the works

- are to be constructed and a legal description of such land;
- (3) Location of the work;
 - (4) Engineering drawings showing the detailed plans of construction;
 - (5) Detailed specifications of construction;
 - (6) Name and address of the person who prepared the plans and specifications for construction;
 - (7) Name and address of the person who will construct the proposed work;
 - (8) General purpose of the proposed work; and
 - (9) Such other information as the commission may require (L 1987, c 45, pt of 2]

Both sections were adopted in 1987 when the Water Code was adopted. Neither section has been amended since 1987.

Under Hawaii Revised Statutes, §174C-92 (1987), existing diversion works had to be *registered*, but no permits were issued or required. .

Under Hawaii Revised Statutes §174C-93 (1987), a new permit is required for "construction or alteration" of an existing structure "*other than in the course of normal maintenance.*"

Thus, if the original structure is being repaired and maintained in accordance with its original design, then no permits are required.

At this time, the Department considers this matter closed and I appreciate your effort in bringing this matter to our attention. If there are other facts you wish to bring to the attention of the Commission on Water Resource Management, please call (808) 587-0214.

Sincerely,

WILLIAM J. AILA, JR.
Chairperson

www.hawaii.gov/dlnr
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[/hawaiidl原因](https://www.youtube.com/thehawaiidl原因)

www.vimeo.com/channels

This is an administrative email account and used to send messages only. For future

18.0 Ned Leone

From: [Ned Leone](#)
To: [DLNR.CW.DLNR.CWRM](#)
Subject: [EXTERNAL] Testimony for Lawai Stream, Kauai
Date: Monday, December 9, 2019 7:32:58 PM

12/9/19

Re. Lawai Stream, Kauai Testimony

Aloha Commissioners of Water Resource Management:

Per the Registration of Stream Diversion Works and Declaration of Water Use filed 5/26/89 that lists McBryde Sugar Co. Ltd as the 'water user' that registered their diversion for drip irrigation for 1003 acers of sugarcane. I would like to point out some FACTS that you should be and are probably already aware of. First of all, there is no sugarcane or any agricultural crops being grown on that 1003 acres of land.

Also, McBryde Sugar Co. Ltd NO LONGER EXISTS.

The Water Code 174C-57 clearly states if there is any change of 'use' or quantity of water taken, a new application and permit has to be obtained by the 'water user'. And in this case the new 'water user' taking the water is not even on the Registration of Stream Diversion Works and Declaration of Water Use. Also, they are not farmers, they are developers.

The unregistered diverters are hording, storing and banking this water in several reservoirs capable of holding close to 500 million gallons of Lawai Stream water for their present and future developments.

While Lawai Stream is on a crash course to a slow death.

I would also like to point out that where the two Streams (East and West forks) that flow into Lawai Stream is diverted and leaves the watershed of Lawai Valley is only about 60 feet. That leaves about 7 miles of Lawai's watershed being fed through a small pipe. Lawai Stream does not even reach the ocean.

There is nothing good for the health of our stream in this diversion. Change of use, change of quantity, an unpermitted addition on top of the 1925 registered dam, change of 'water user' from farmer to developer, a massive change in the whole eco-system.

It is time for CWRM to stand up and live up to its motto "Ke Kahuwai Pono" for all our streams and for the future generations.

Ned Leone,

A concerned citiZen that has lived and farmed alongside Lawai Stream for over 43 years.

19.0 Jan Westphal

From: [Humanitree Movement](#)
To: [DLNR.CW.DLNRCWRM](#)
Subject: [EXTERNAL] Stop Lawae stream diversion
Date: Monday, December 9, 2019 9:27:53 PM

Please respond to this comment

Hello Im submitting public testimony to stop all diversion of Water from Lawae stream unless a proper use application is filed and approved.

CWRM should not even be setting an IFS for Lawai Stream, as there is no proper application nor approval for the waters currently being diverted. The off-stream by A&B through a newly formed McBryde Resources Inc. is not documented and is not clear. Whatever the use, it is not one of the protected Public Trust doctrine uses and therefore proper application and a specific Use Declaration is mandatory. HRS section 174c-57, a law that embodies and is intended to enforce the Hawaii State Constitution's protection of our streams.

Thank you.

Signed Jan Westphal

Mailing Address



Kapaa, HI 96746

20.0 Jan Muller

From: [Jan M](#)
To: [DLNR.CW.DLNRCWRM](#)
Subject: [EXTERNAL] Hawaii State Constitution's Protection of our Streams.
Date: Monday, December 9, 2019 10:22:38 PM

More local injustice

CWRM should not even be setting an IFS for Lawai Stream, as there is no Proper Application nor approval for the waters currently being diverted.

The offstream by A& B through a newly formed McBryde Resources INC. is not documented and is not clear. Whatever the use, it is not one of the protected Public Trust Doctrine uses and therefore proper application and a specific Use Declaration is Mandatory. HRS section 174c-57, a law that embodies and is intended to enforce the Hawaii State Constitution's protection of our streams.

Some FACTS; The CWRM held a public meeting on 10/28/19 to gather local knowledge on Lawai Stream. The audio from that meeting was shared previously and all describe and increase in the amount of water being diverted out of Lawai Stream.

McBryde Sugar Company, Ltd. filed a Registration of Stream Diversion Works and Declaration of Water Use, May 24th 1989 for the waters taken from the Lawai Stream by diversion 812 and it's ditch system.

In their Declaration, McBryde Sugar identified the use of the water taken as being diverted to drip irrigate 1003 acres of sugar cane.

According to the Water Code, adopted in 1988, all diverters were required to maintain the status quo of every stream diversion, unless they applied to CWRM for an ALTERNATE PERMIT. HRS SECTION 174C-57 specifically required that if the use or quantity changed, A NEW APPLICATION AND PERMIT HAD TO BE OBTAINED BY THE DIVERTER

MCBRYDE SUGAR ceased operations in 1996. On page 51 of the CWRM IFS, the STATE reports that after 1996, the Lawai Stream

DIVERSION WAS OPERATED BY McBryde Resources Inc. a wholly owned subsidiary of A& B. The problem is that McBryde Resources INC was NOT FORMED UNTIL 2011. A bigger problem is that sugar irrigation stopped in 1996, and while the state reports that A&B continued to use the water to irrigate its development, there is no confirmation of that report. Even the CWRM IFS refers to the waters diverted as having

"the CAPACITY TO SUPPORT KUKUIULA DEVELOPMENT. CWRM does not offer any evidence of how the water taken has been used since

Sugar and the McBryde Sugar Co ended in 1996, as there was no new Water Use Declaration Filed after 1989,

21.0 Ezikio Kekoa Quintana

From: [Ezikio Quintana](#)
To: [DLNR.CW.DLNRCWRM](#)
Subject: [EXTERNAL] Lawa`i Stream Diversion
Date: Monday, December 9, 2019 11:27:51 PM

To who it may concern,

For the sake of your time and mine I'll start by saying that I agree with the testimony of Fern Ānuehue Holland.

As for my own experience with Lawa`i stream; I was raised in Wailua, so my time spent in Lawa`i was minimal until the last 3-4 years. However, in the short time that I've been familiar with the valley and the stream, I've fallen deeply in love with them, and it pains me to think of how the stream is being so horribly exploited and abused. I helped to clean the portion above the diversion after the April 2018 flooding, and it has returned my work with wonderful memories. I hope you are able to right by the land and the people which depend on it.

With trust and appreciation for your help,
Ezikio Kekoa Quintana

22.0 Jan Muller

From: Jan M
To: DLNR.CW.DLNRCWRM
Subject: [EXTERNAL] Fwd: Hawaii State Constitution's Protection of our Streams.
Date: Monday, December 9, 2019 11:30:38 PM

Sorry, I accidentally must have pushed send and there is more I want to make certain to share. This is Jan Muller, [REDACTED]
The McBryde CEASED OPERATIONS IN 1996. on PAGE 51 OF THE CWRM IFS THE State reports that after 1996, the Lawai Stream diversion was operated by McBryde RESOURCES INC. A WHOLLY OWNED SUBSIDIARY OF A&B. . The problem is that McBryde was not formed until 2011. A bigger problem is that sugar irrigation stopped in 1996, and while the state reports that A&B continued to use the water to irrigate its development, there is no confirmation of that report. Even the CWRM IFS refers to the waters diverted as having "the Capacity to support Kukuiula Development. CWRM doesn't offer any evidence of how the water taken has been used since sugar and McBryde Sugar Co ended in 1996 as there was no new Water Use Declaration filed after 1989.

Link to the 63 page IFS draft that Ayron Strauch prepared for the public, prior to the Lawai Fact Finding meeting 10/28/2019. (pages 49-51 re the end of McBryde Sugar and McBryde Resources Inc. an unrelated company that just happens to use the name McBryde and operates the diversion taking water from Lawai Stream
33-4e7e8315-8285b8f3141e
<https://www.stifel.com/Docs/MuniBond/Resources/ViewDocument/45570/6bc69516-1e33-4e-8315-8285b8f3141e>

In fact, A&B, owner of McBryde Resources Inc. recently issued a \$19 million municipal bond offering and stated that they have all the water they need for Kukuiula Development from sources other than the earthen reservoirs which are currently being used to bank and hoard water from Lawai Stream. In their bond offering A & B states that they warrant the representations made as true and claim not to need any of the water diverted from Lawai Stream for Kukuiula Development company as the sources of water that are "in excess" of what they need, come from reservoirs and wells not fed by the Lawai Stream Diversion and ditch system:

" The Developer has completed approximately 75% of the required and planned major infrastructure necessary for the development of the entire Kukui ula project, including the portions thereof that are outside of the District and the portions that District but are exempt ("or expected to be exempt) from the special taxes such as the golf course, clubhouse, spa, farm and lake. Such infrastructure includes both on and offsite infrastructure required to serve the development" page 35 Kukuiula Development \$19 million tax exempt bond offering.
<https://www.stifel.com/Docs/MuniBond/Resources/ViewDocument/45570/6bc69516-1e33-4e7e-8315-8285b8f3141e>

Please make wealthy and powerful companies follow the law to protect all the citizens of this God Given Paradise. Laws are passed to protect the rights of all citizens and must be enforced by our Government Officials.

Respectfully submitted, Janet Muller [REDACTED]. I have been a full time resident here since 2003 and invested our life's savings here in 1989. This is HOME.

From: Jan M [REDACTED]
Date: Mon, Dec 9, 2019 at 10:22 PM
Subject: Hawaii State Constitution's Protection of our Streams.
To: <dlnr.cwrm@hawaii.gov>

More local injustice

CWRM should not even be setting an IFS for Lawai Stream, as there is no Proper Application nor approval for the waters currently being diverted. The offstream by A& B through a newly formed McBryde Resources INC. is not documented and is not clear. Whatever the use, it is not one of the protected Public Trust Doctrine uses and therefore proper application and a specific Use Declaration is Mandatory. HRS section 174c-57, a law that embodies and is intended to enforce the Hawaii State Constitution's protection of our streams.

Some FACTS; The CWRM held a public meeting on 10/28/19 to gather local knowledge on Lawai Stream. The audio from that meeting was shared previously and all describe and increase in the amount of water being diverted out of Lawai Stream. McBryde Sugar Company, Ltd. filed a Registration of Stream Diversion Works and Declaration of Water Use, May 24th 1989 for the waters taken from the Lawai Stream by diversion 812 and it's ditch system. In their Declaration, McBryde Sugar identified the use of the water taken as being diverted to drip irrigate 1003 acres of sugar cane.

According to the Water Code, adopted in 1988, all diverters were required to maintain the status quo of every stream diversion, unless they applied to CWRM for an ALTERNATE PERMIT. HRS SECTION 174C-57 specifically required that if the use or quantity changed, A NEW APPLICATION AND PERMIT HAD TO BE OBTAINED BY THE DIVERTER

MCBRYDE SUGAR ceased operations in 1996. On page 51 of the CWRM IFS, the STATE reports that after 1996, the Lawai Stream DIVERSION WAS OPERATED BY McBryde Resources Inc. a wholly owned subsidiary of A& B. The problem is that McBryde Resources INC was NOT FORMED UNTIL 2011. A bigger problem is that sugar irrigation stopped in 1996, and while the state reports that A&B continued to use the water to irrigate its development, there is no confirmation of that report. Even the CWRM IFS refers to the waters diverted as having "the CAPACITY TO SUPPORT KUKUIULA DEVELOPMENT. CWRM does not offer any evidence of how the water taken has been used since Sugar and the McBryde Sugar Co ended in 1996, as there was no new Water Use Declaration Filed after 1989,

23.0 JoAnn Yukimura

JoAnn A. Yukimura



Lāhu'e, HI 96766

December 9, 2019

Commission on Water Resources Management
Department of Land and Natural Resources
State of Hawaii
dlnr.cwrmm@hawaii.gov

RE: Lāwa'i Stream Instream Flow Standards

Chair Case and Members of the Commission on Water Resources Management
(CWRM):

Thank you for this opportunity to submit testimony related to the amending of Interim Instream Flow Standards for Lāwa'i Stream on Kaua'i.

I attended CWRM's Fact Gathering meeting on October 28, 2019 and listened to the heartfelt and compelling testimony of many longstanding Lāwa'i residents affected by the apparent diversion of Lāwa'i Stream in 2013 when the stream "dried up." I did not testify that evening, but would now like to join the many community voices in requesting that strong Interim Instream Flow Standards be set to ensure that the public interest is protected.

I would like to call your attention to two important points:

1. It is clear that the "status quo" was drastically changed in 2013 when a "repair" was conducted and the water stopped flowing. That year, a "low rock wall" built in 1925 that had allowed the overflow of some water was elevated by additional concrete to divert 100% of the Stream, leaving downstream users without water for irrigation, swimming and other recreation, habitat for native species, and as a food source. This action appears to have been more than a repair and as such would seem to have been illegal. The Instream Flow Standards need to be set to

allow--indeed, mandate--the flow of Lāwa‘i Stream which has always been a perennial stream.

2. It appears that the Registration of Stream Diversion Works and Declaration of Water Use filed by McBryde Sugar Company, Ltd. in 1989 for waters taken from Lāwa‘i Stream to irrigate 1003 acres of sugar cane is of questionable currency. No new application was filed nor permit obtained (as required by the Water Code) after McBryde ceased its sugar growing operations in 1996. One of the citizens testifying at the Fact Gathering meeting on October 28, in true Aloha style, said he was willing to share the water with golf courses and resorts, but not to the extent that he and his community would be “deprived.” Given the fact that A&B recently issued a \$19 million municipal bond offering saying that they do not need the water diverted from Lāwa‘i Stream, it is time to put things back in balance--ecologically, economically and legally--with strong Instream Flow Standards.

I have confidence that you will uphold your responsibilities as holders and protectors of the public trust.

Me ke aloha pumehana--and Happy Holidays!

A handwritten signature in black ink that reads "JoAnn Yukimura". The signature is written in a cursive, flowing style with a prominent loop at the beginning of the first name.

JoAnn A. Yukimura

24.0 Ellen Ebata

From: [Ellen Ebata](#)
To: [DLNR.CW.DLNRCWRM](#)
Subject: [EXTERNAL] IFS, Hydrologic Unit 2050 Lawai
Date: Monday, December 9, 2019 11:47:55 PM

Chair Suzanne Case and
Commissioners on Water Resource Management
State Department of Land and Natural Resources
P. O. Box 621
Honolulu, HI 96809

Chair Case & Commissioners,

Please kindly consider the following comments on the Draft Instream
Flow Standard Assessment Report, Island of Kauai, Hydrologic Unit
2050 Lawai.

Following the cessation of sugar cane production around 1996 Alexander &
Baldwin purchased purchased sugar fields and took over the operation of
Lawai Stream diversion 812 through a wholly owned subsidiary, McBryde
Resources Inc. It does not appear, however, that, as required by the
Water Code, documents informing the State of a changed use for the diversion of
water or that A&B is now diverting Lawai Stream through its subsidiary, were
ever filed.

The continued diversion by A&B should not be considered in making any
determination for the IFS as there is no clear statement of use nor has A&B
filed for nor received approval of the ongoing diversion.

As you are aware of this lack of proper documentation, it seems that the
only appropriate action would be to do the right thing - require it and
follow through.

Sincerely,

Ellen Ebata
Koloa, HI

25.0 Diane deVries

From: [Diane de Vries](#)
To: [DLNR.CW.DLNR.CWRM](#)
Subject: [EXTERNAL] Fwd: Water diversion of the Lawai Stream
Date: Monday, December 9, 2019 11:58:14 PM

Sent from my iPad

Begin forwarded message:

From: Diane de Vries [REDACTED]
Date: December 9, 2019 at 11:56:48 PM HST
To: Diane de Vries [REDACTED]
Subject: **Water diversion of the Lawai Stream**

Dear CWRM Representatives

Why is CWRM even considering an IFS for the Lawai Stream since, in my opinion, there is no evidence of a proper application or official approval for the diversion of these waters, and no documentation of what these waters are being used for. The Public Trust doctrine requires the proper application and a Specific Use Declaration, as per HRS section 174c57(as reported in the IFS draft, prepared for the public at the CRRM meeting on 10/28/19) Since these requirements have not been completed, how can CWRM consider this matter?

Much of my information and concern comes from the above mentioned IFS draft, which states that In 1989, apparently, McBryde Ltd. filed a Registration of stream works and a Declaration of water use, regarding Diversion 812. It described the use as drip irrigation for 1003 acres of sugar cane. In 1996, McBryde Sugar Ltd. ceased to exist. Then in 2011 it looks like a completely different company, McBryde Resources Inc., was formed. But regulations required that an application for water use had to be obtained by the original diverter, McBryde Sugar Ltd, as reported in the ISF draft.

So while the State reports that A&B continued to use diverted water to irrigate its Kukuiula development in the CWRM IFS, and states that A&B has the water capacity, which they say is enough water for all of their development's needs, it doesn't offer any evidence of how the water was used since 1989, when McBryde Sugar Ltd. ended.

Page 51 of the CWRM IFS says that the State reports that the Lawai Stream diversion was operated by the new company, McBryde Resources Inc., which is apparently, wholly owned by A&B. It sounds like this new company currently operates the Lawai Stream diversion, but has never filed the proper application or received a permit to divert.

Recently A&B, owners of McBryde Resources Inc., stated in their bond offering that they have all the water, which they say comes from reservoirs and wells, that

they need for their Kukuiula development. So why are they continuing to divert?
If they are diverting, I doubt that their current water usage is consistent with the Public Trust doctrine, which enforces the Hawaii State Constitution that protects our streams.

Why even hear this matter, unless the basic application and declaration are in place?

Sincerely,

Diane de Vries
Resident of Kauai

Sent from my iPad

26.0 Matt Rosener

North Shore Hydrological Services

Matt Rosener, MS, PE, Principal

December 9, 2019

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

To whom it may concern,

In regards to the Draft Instream Flow Standard Assessment Report (IFSAR), Island of Kauai, Hydrologic Unit 2050 Lawai, dated September 2019 (Draft PR-2019-05), I respectfully submit the following comments as a hydrologist working in the field of water resources management on the island of Kauai. While I appreciate the proactive approach being taken by the Commission here, I do feel that the draft report is incomplete and premature, given the expected release of results from the ongoing USGS Low-flow Study for Southeast Kauai within the next year. I understand that there are significant limitations in the amount of surface water data available for the Lawai Stream drainage basin, with no long-term continuous stream gage records existing, but this is all the more reason to withhold assessment until the USGS study is complete and accepted by CWRM.

Unfortunately, several mistakes and omissions made the draft report confusing to read, particularly in the important section titled, "Surface Water", on pages 36-38. Here the report text makes erroneous reference to tables and figures (e.g. Table 11-2 reference should be Table 3-2, Figure 3-6 reference should be Figure 3-3), and the USGS Seepage Run graphic in Figure 3-4 seems to be missing completely, with no data from the seepage run presented elsewhere in the report. For the streamflow data that is presented in this section, a map graphic showing the locations of gage stations and other sites with streamflow records would be very helpful in understanding the spatial relationship of these records. I also found myself wondering about the period of record for the new USGS continuous low-flow monitoring station (16052400) which was not included in the report text or Table 3-2.

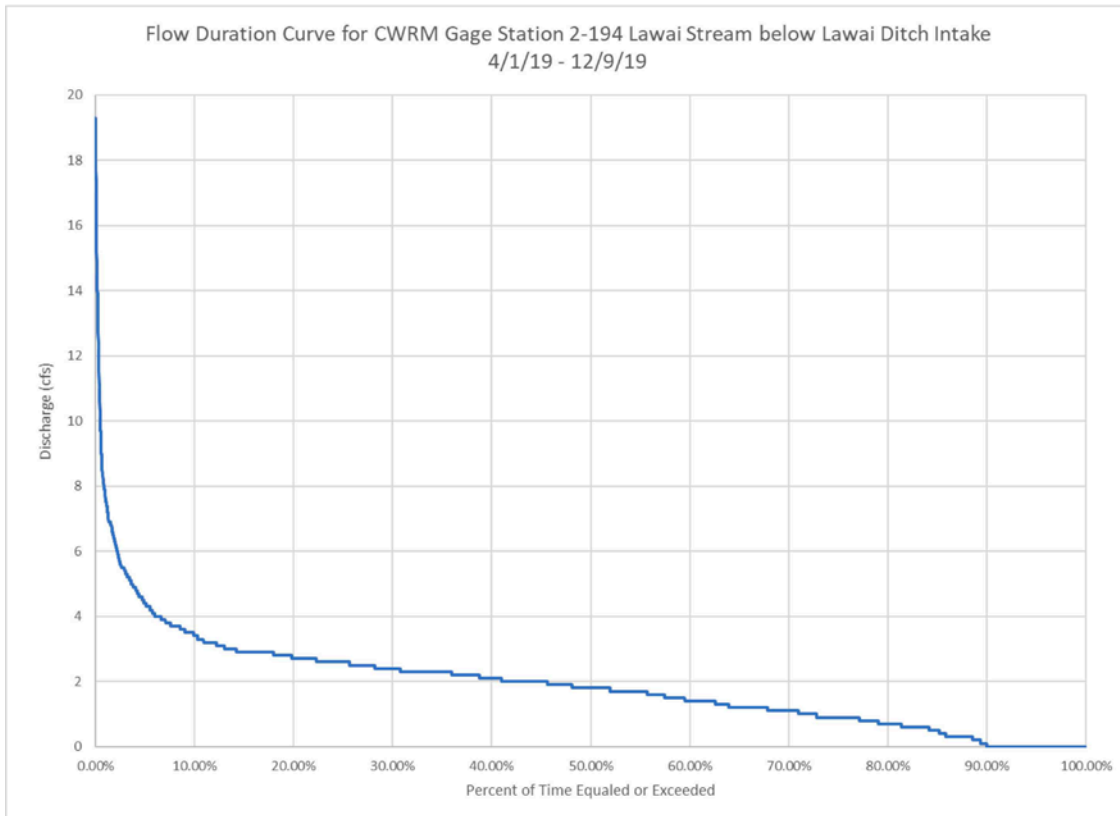
Based on the brief description of the analysis related to flow estimates presented in Table 3-2, I have to assume that a simple drainage basin (area) correlation was used to synthesize the duration discharges for the Left Branch Lawai Stream from those calculated for the Right Branch, but again I found myself wondering if differences in rainfall or other significant hydrologic variables were accounted for in this analysis as it was not explained very well. I see that the numbers from Table 3-2 match with the flow metrics presented in Figure 11-3, the schematic of the Lawai Stream, ditch, and reservoir network. Using numbers from Table 11-2 for Lawai Ditch gage records and comparing a median ditch flow (i.e. Q_{50}) of 0.49 MGD at the Lawai Ditch Intake to a median streamflow of 1.77 MGD, this suggests a diversion take of only 28% during "normal" weather and flow conditions.

But this does not correlate well with accounts I've heard from people who live along Lawai Stream and observe substantial water diversion into the Lawai Ditch. The fact that streamflow bypassing the diversion dam is regularly limited to what can pass through a 6" pipe that probably has a partially clogged

North Shore Hydrological Services

Matt Rosener, MS, PE, Principal

intake more often than not makes me suspicious that the diverters may be under-reporting. Using the continuous flow data from the CWRM stream gage on Lawai Stream below Diversion 812 for the period 4/1/19 to 12/9/19, a flow duration analysis reveals that there was zero flow measured at the gage site approximately 10% of the time (see flow duration curve below). This is an unacceptable condition for a stream that once supported a healthy native stream ecosystem and very well could again someday. While I am waiting for the USGS study results and further flow data to become available for analyses, I already have serious concerns about the current configuration of the diversion dam and intake structure at Diversion 812, and I fully expect that changes will be required as part of any change to the Instream Flow Standard for Lawai Stream



Another important area where I think the draft IFSAR is lacking is in the discussion of the end uses of the water diverted from Lawai Stream into the Lawai Ditch. Several references are made to "landscape irrigation", "golf course irrigation", and "diversified ag" (e.g. Figure 11-3). But it is very difficult to assess the overall value of the Lawai Ditch diversion when the relative significance of these various end uses is either unknown or just not presented in the report. Are we weighing the decision of restoring aquatic ecosystems vs. watering golf courses and luxury home lawns? I think Kauai people would like to know where the water ultimately goes and how much of it is used for what purposes at the end of the lines.

North Shore Hydrological Services

Matt Rosener, MS, PE, Principal

Page 40 of the draft report states that, "Native Hawaiians generally utilized natural resources within the limits of their ahupuaa; therefore, it was important to manage and conserve these resources. Likewise, watershed resources must be properly managed and conserved to sustain the health of the stream and the instream uses that are dependent upon it." The diversions in the Lawai Stream watershed once again demonstrate the common practice of inter-basin water transfer that represent a complete paradigm shift from the traditional way of managing Hawaii's most precious natural resource. And in this stream basin, we once again have the opportunity to lean on the wisdom of our host culture by returning to elements of the ahupuaa system and restoring flow to the dewatered Lawai Stream.

I have firsthand experience working in this stream, through contract and partnerships with the University of Hawaii and the National Tropical Botanical Gardens. And while water diversion is not the only significant cause of degradation in Lawai Stream, my feeling is that most other efforts to restore this waterway will be futile without first addressing the drastic alterations to the flow regime that have continued for much too long already. I hope that you will strongly consider the IFS-setting process for Lawai Stream as an opportunity to bring life back to a degraded ecosystem.

Humbly submitted,

A handwritten signature in black ink that reads "Matt Rosener" with a long horizontal flourish extending to the right.

Matt Rosener, P.E.
Hydrologist/Water Resources Engineer

27.0 Mahealani Perez Wendt

From: wailuanui@exede.net
To: [DLNR.CW.DLNRCWRM](#)
Subject: [EXTERNAL] Lawai Stream IIFS
Date: Monday, January 6, 2020 4:50:44 PM

Aloha,

Our family members are landowners, approximately 20 acres, in Lawai Valley along Kua Road and have resided there for many generations. I have an undivided interest in our family lands, approximately 5 acres. Lawai Stream runs through our property and we have riparian rights. My brothers and sisters and I grew up there, fished, caught `o`opu, gathered prawns and other food, swam -- did all the things that might be expected growing up along the stream. Although I currently reside on Maui, my adult children plan to move to our family land. I was very disappointed to learn from my brother and cousin, who still reside there, that especially in recent years, the water levels are way down, not enough water to sustain streamlife.

I have been a leader in water restoration efforts in East Maui, and it pains me deeply, after spending 30 years of my life fighting for water in East Maui and now that that issue is somewhat resolved, to learn that A&B is now doing the same thing on our family land on Kaua`i. I agree that the USGS study should be completed and made available to the Commissioners and public before any decision on the IIFS is made. Moreover, and bottom line, the stream should be restored to assure a healthy environment for all life concerned.

Thank you for this opportunity to comment.

Mahealani Perez Wendt