



October 17, 2021

Via Electronic Mail

Commission on Water Resource Management
Kalanimoku Building
1151 Punchbowl Street, Room 227
Honolulu, Hawai'i 96813
dlnr.cwrn@hawaii.gov

Re: Agenda Item B.1

Approve Amendment to Commission Order to Maui Land & Pineapple for Modification to Diversion 770 on Honokōhau Stream (Honokōhau Ditch Intake #1) Originally Approved on November 20, 2019, in Order to Meet the Instream Flow Standard for Honokōhau Stream, Surface Water Hydrologic Unit of Honokōhau (6014), Honokōhau, Maui

Tuesday, October 19, 2021, 9 a.m.
Via Remote Video Conferencing

Dear Chair Case and Commissioners:

Mahalo for the opportunity to comment on staff's proposal to amend the Commission's prior action addressing the waste of Honokōhau surface water resources.

As an organization advocating on behalf of communities seeking restoration of healthy waters and waterways throughout the pae 'āina,¹ we recommend further clarity and greater expediency in the completion timelines for the long-overdue implementation of this Commission's November 20, 2019 prior action in this matter.

We generally support amending the Commission's 2019 decision along the lines staff recommends, but respectfully suggest the following amendments to staff's enumerated recommendations on page 5 of the staff submittal:

First, staff's recommendation #1.a should be amended to include a clear deadline for installation of the temporary plywood restrictor plate necessary to prevent wasting of water

¹ For example, Earthjustice represents Moloka'i Nō Ka Heke in the combined petition and complaint filed with this Commission on July 1, 2019 (still pending), which includes a complaint against waste of Moloka'i's surface water resources (CDR.5310.4).

until permanent steel plates are installed. As currently worded, the 90-day planning and 1-year implementation deadline established in staff's recommendation #3 could be construed to apply to all items listed in recommendations #1 and #2. The schedule proposed by Akinaka and Associates for installation of the plywood restrictor plate included a period of 2 weeks to inspect the project location, and 1.5 months for installation.² It is our understanding from discussions with community members that Hawai'i Water Services Company staff have already visited and inspected the site. Thus, we recommend including an explicit 30-day deadline for installation of the plywood restrictor plate in staff recommendation #1.a.

Second, and consistent with the clarification above, staff recommendation #3 should be amended to make clear that the deadlines contained in #3 do not apply to recommendation #1.a.

Third, staff's recommendation #3 should be further amended to shorten to six months the deadline for installation of the long-term steel restrictor plates. Another full year is an unreasonably long time for implementation of the Commission's decision, which is already nearly two years old. Considering the 90-day period given for finalizing plans, and given Commission staff's confirmation that these minor alterations to the existing diversion structure do not require a stream channel alteration permit,³ it is more than reasonable for this Commission to insist on completion of this project within six months.

Timely resolution of water wasting complaints and prompt implementation thereof should be a priority, both for this Commission and for responsible diverters. Communities that rely on healthy stream flow, such as the people of Honokōhau, have been bearing the burden of wasteful diversion practices across these islands for decades. When a community takes formal action to contest the wasting of water, we respectfully urge that this Commission is obligated to act expeditiously on such complaints, and moreover, take a firm stance to cut through what often seem to be endless delays and deferrals of on-the-ground results.

He ali'i ka 'āina,

/s/ Mahesh Cleveland

Mahesh Cleveland

Leinā'ala L. Ley

EARTHJUSTICE

² Staff Submittal at 17.

³ Staff Submittal at 5.