



# SIERRA CLUB OF HAWAI'I

Testimony to the  
COMMISSION ON WATER RESOURCE MANAGEMENT

May 16, 2023  
B-1 and B-2

Agenda Items B-1 & B-2 Stream Diversion Works Permit Application

Chair Chang and members of the Commission on Water Resource Management,

The Sierra Club has long called for protection of the Huelo streams that will be affected by the applications before you. And we have called for quick action. We appreciate CWRM's staff organizing quarterly meetings to discuss issues related to the east Maui streams.

But these applications were not discussed – nor were they provided – at the only quarterly meeting that was held. CWRM staff never provided the Sierra Club EMI's application – despite repeated requests. And we request – once again – that we be provided with EMI's other applications that are not part of these staff submittals.<sup>1</sup>

Substantively, we have serious concerns.

Notification Before Alteration: Residents of Ho'olawa and Waipio streams need to be notified about *dates* when alteration work will occur. This is particularly important if any of the stream waters are going to be impounded and then released. The sudden release of water jeopardizes those who are in the stream makai of the alteration work. This can be as simple as a sign on the main community roads with a website or phone number or as specific as a letter mailed to all property owners. Such a condition needs to be incorporated into any approval for public safety.

Berms and Lips: The staff submittal calls for berms to be placed in Kailua, 'O'opuola streams. Ayron Strauch, Ph.D. informed us that the metal plates across the gate would be installed at a slightly lower height than the existing grates so that water would flow down over and across it. As we mentioned in our testimony in November, "Staff described how the 18-inch plate would be installed (so that it was lower than the grates to ensure its effectiveness). That kind of

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<sup>1</sup> In November, CWRM ordered: "East Maui Irrigation will submit a reasonable timeline to implement the seven priority modifications to Commission staff within 60 days, including likely permitting or jurisdictional requests from other agencies. . . . East Maui Irrigation will submit a reasonable timeline to implement the other system modifications to Commission staff within 120 days, including likely permitting or jurisdictional requests from other agencies." Can we please see these submissions?

description should be memorialized in the submittal.” As we feared, the proposal discussed back in the fall is nowhere to be seen. The berms adversely affect the natural look of the streams and are less desirable option than the modification that Ayron described to us before the IIFS was adopted.

Hoolawa Stream H-7 (B-1): The sluice gate there was removed years ago. We have photographs from 2018 showing its absence. The IIFS approved in November did not call for replacing the sluice gate. Calling for the sluice gate to be replaced will actually make matters worse for the stream than it is now. It will keep even more low flows behind the dam. The structure needs to be altered because it represents a drowning hazard for people who may be swimming in the swimming hole just above it. When water levels are high, the current could pull someone down beneath that part of the concrete dam that is depicted above water in the photograph.

Hoolawa Stream NH-19/234 (B-2 abandonment): EMI’s April 1970 ditch system map depicts this diversion structure being on the west branch of Ho‘olawa Lili stream, not Ho‘olawanui.

Hoolawa Stream NH-21: While the Sierra Club applauds the plugging and sealing of the hole, EMI should also restore the stream to its natural condition. The dam structure impedes natural flow as well as natural beauty. It should be removed as the Division of Aquatic Resources has recommended.

Waipio Stream L-9 (238) (B-2 abandonment): It is unclear whether the overpass and pipes are designed so that the larger flows do not go into Lowrie ditch. Is the overpass sized to accommodate all flows? The Division of Aquatic Resources called for adding wing walls on the overpass channel to contain the flow and keep it from spilling into the ditch as well as constructing curbs above the upstream end to concentrate the stream flowing into the overpass channel and from spilling into the ditch. The Sierra Club supports the Division of Aquatic Resources and your staff’s recommendation.

Oanui/Ohanui/Kailua tributary W-15. Not only are the berms aesthetically unappealing, but it is also unclear that (a) they will stand up to high flow volumes and (b) result in sufficient water flowing downstream. Will these modifications ameliorate the stagnant pools on Kailua stream below the Hana Highway? In addition, there is abundant debris in Oanui/Ohanui stream between the NH and Wailoa diversions that needs to be removed. Is the driscoll pipe that leads from NH ditch and along Kailua/Puomalie rd a registered diversion?



‘O‘opuola Stream NH-6 (B-2): This area is littered with various pipes – not just the ones shown in the photograph. Some are PVC and some are aluminum cemented into the stream bank. Any approval should be specific that all the embedded and loose pipe structures should be removed.

‘O‘opuola Stream C-7 (B-1): We are happy to see that this leaky, battered crumbling diversion structure will be bypassed. However, the diversion structure is massive and really blocks the stream channel for any use by native stream species. Is there any proof that the Center ditch is actually diverting stream water for any productive use? It appears to connect to Lowrie ditch which has not been in use for several years. Is this structure needed? Will the proposed “berms” to direct flows actually be effective?

Makanali Stream W-9 There are numerous sections of abandoned/ broken and embedded pipes in this tributary of 'O'opuola stream between Diversion W-9 and Diversion NH-6 as well as above diversion W-9. All should be removed.

While alteration of many of these diversion structures represents progress, real consultation with Hawaiians and other residents of East Maui would reveal the need for more systemic alteration and removal of structures that interfere with stream flow.

# EAST MAUI IRRIGATION COMPANY, LLC

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Dawn N.S. Chang, Chair  
State of Hawaii  
Department of Land and Natural Resources  
Commission on Water Resource Management  
PO box 621  
Honolulu, Hawaii 96809

May 16, 2023

B-2

Subject: EMI written testimony on Agenda Item ~~B-1~~ before the Commission on Water Resource Management meeting May 16, 2023 regarding:

Approval of Stream Diversion Works Permit Application (SDWP.5991.6) and Special Conditions, East Maui Irrigation Company, LLC, Abandon Registration of Stream Diversion Nos. 234, 254, 238, 273, 260, 150, 262, and 173; Remove Pipes and Seal Intakes; Ho‘olawa, Waipi‘o, Oanui, West ‘O‘opuola Tributary, ‘O‘opuola, ‘O‘opuola Tributary, and Makanali Streams, Maui; Tax Map Key(s): (2) 1-1-001:042; 2-9-014:001-002, 007, and 009; and Declare that Project is Exempt from Environmental Assessment Requirements under Hawaii Revised Statutes Chapter 343, and Hawaii Administrative Rules Chapter 11-200.1

Dear Chair Chang:

On behalf of our client, East Maui Irrigation (EMI), we offer the following comments to Item B-1:

1. In general, EMI is committed to restoring un-diverted streamflow to the listed streams by altering the listed diversions so as to reduce or abandon the use, as appropriate, of water currently diverted for off stream uses so as to comply with the IIFS decisions made by the CWRM in November 2022. EMI is committed to the goal of implementing the November 15, 2022 IIFS decisions as quickly as possible, while complying with all regulatory requirements.
2. EMI asks for and appreciates the commission’s continued flexibility and understanding for a reasonable timeline towards meeting the identified flow restoration goals. Based on earlier experience with permits for modification or abandonment of other East Maui diversions, we are hopeful that other required federal, state, and county agency reviews can be completed, and approvals can be obtained in a timely manner, and will not impose conditions that would significantly delay our work on the subject diversions. Nevertheless, neither the timeframe for completion of these reviews nor the conditions that may be imposed are within our control. Additionally, there has been very limited input from U.S. Fish and Wildlife Service on our previous diversion modifications/abandonments so we will not have a clear understanding of how their protocols might impact the work schedule until we consult with them. Therefore, EMI will endeavor to keep the Commission informed of the progress of other agency reviews and conditions as identified in Item B-1.

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3. There is a concern about the wording in the title of this agenda item that refers to abandoning registrations. This is new and goes beyond the action taken by the Commission in November 2022 on the subject IIFS. Registration of water uses was a data collecting requirement of the State Water Code, not part of the regulatory system. It is not clear how this is relevant to complying with an **interim** (emphasis added) instream flow standard (IIFS). Are all other reductions in registered water uses being reported and abandoned?
4. There is also concern with some of staff recommendations that go beyond the IIFS decision and implementation actions approved by the CWRM in November of 2022. These relate to the requirements for the complete removal of some of the diversion structures. It is important to remember that the decision made by the Commission was again for an **interim** instream flow standard which, by statute, can be changed in the future. While EMI is completely in accord with the abandonment of the **use** of a diversion in order to comply with the November 2022 IIFS decision, this is completely different from the abandonment of the structure and its complete removal. Such a permanent action is inconsistent with the statutory nature of an IIFS. Since interim instream or instream flow standards can be amended in the future and based on previous discussions with CWRM staff about how to abandon the diverted amounts from the listed diversions in a timely manner, EMI asserts that it can meet the goal of restoring instream flow and complying with the IIFS without completely removing the diversion structures. This would comply with the law while minimizing the impacts on the environment.
5. EMI understands that the Division of Aquatic Resources’ policy for the abandonment of diversion structures is the removal of the diversion structure(s) and associated infrastructure(s) restoring the stream channel as much as possible to its natural condition. However, structures can still be modified to address instream flow restoration quantities and connectivity issues without completely removing structures. DAR only requested that 1 of the 8 diversions be completely removed, while the CWRM staff used that policy to add that one other diversion now be completely removed rather than the originally agreed upon (between CWRM staff and the applicant) removal of pipe. Additionally, DAR offered in another situation the alternative of creating a low flow channel in lieu of the complete removal of diversion OH-1(NH-21/254). Again, EMI asserts that compliance with the November 2022 IIFS decision and its order to abandon certain diversions relates to the abandonment of the **use** of the diversion, not abandonment of the structure, which is in accord with the legal meaning of an **interim** instream flow standards (IIFS) and consistent with the minimization of impact on the environment.
6. EMI is agreeable with recommendation 1.a.i. for Diversion L-9/238. EMI believes that the conceptual idea of creating wing walls and an overpass as discussed with CWRM staff is already addressed and that agreeable dimensions of the wing walls to prevent any flow from Waipi‘o Stream from entering Lowrie Ditch can be addressed during actual construction with oversight from CWRM and DAR staff.
7. Other comments:
  - a. References to Ho‘olawa Stream should be corrected to the correct branch name of Ho‘olawanui Stream as specified in the application and is where Diversions NH-19/234 and OH-1(NH-1-21/254) are located.

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- b. On page 16 of the Staff Submittal the date referenced under item 3 should be “November 15, 2022”.
- c. EMI recognizes some oversight occurred leaving out order actions associated with certain recommendations of the November 15, 2022 action. The applications themselves are recognition of the oversight.
- d. Standard condition #2 in Exhibit 12 concerning metering is unnecessary for abandoned use.
- e. EMI thanks the Commission staff for its assessment that:
  - i. All TMK’s appear to be in Flood Zone X, which are areas determined to be outside of the 0.2% annual chance floodplain; and
  - ii. Abandonment work as specified in the application and submittal is exempt from the requirement to prepare an environmental assessment under HRS Chapter 343.

Thank you for the opportunity to comment.