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DEPARTMENT OF LAND AND NATURAL RESOURCES | KA ʻOIHANA KUMUWAIWAI ʻĀINA
COMMISSION ON WATER RESOURCE MANAGEMENT | KE KAHUWAI PONO
P.O. BOX 621
HONOLULU, HAWAII 96809

STAFF SUBMITTAL

COMMISSION ON WATER RESOURCE MANAGEMENT

April 16, 2024
Honolulu, Hawaiʻi

Approval of Stream Diversion Works Permit Application (SDWP.6011.6) and Special Conditions, East Maui Irrigation Company, LLC, Modification of Stream Diversion Works Nos. Diversions 156 and 209 on the East Kōlea Stream; Diversion 232 on the Kaʻaiea Stream; Diversion 142 on the ʻOʻopuola Stream; Diversions 168, 267, 255, and 187 on the Nailiilihaele Stream; Diversion 177 on the Hānawana Stream; and Diversions 145, 243, 144, 236 and 244 on the Hoʻolawa Stream to Fix Leaks, Add Baseflow, and Provide Habitat Connectivity, East Maui
Tax Map Key(s): (2) 1-1-001:042, 50; 2-9-004:004; 2-9-012:029; 2-9-014:001, 004, and 009

APPLICANT
East Maui Irrigation Company, LLC
P.O. Box 1104
Puʻunēnē, HI 96784

LANDOWNER
East Maui Irrigation Company, LLC
(2) 1-1-001:042; 2-9-004:004; 2-9-012:029;
2-9-014:004, and 009

State of Hawaiʻi
(2) 1-1-001:050; 2-9-014:001

SUMMARY OF REQUEST

Approve Stream Diversion Works Permit Application (SDWP.6011.6) submitted by the East Maui Irrigation Company, LLC (EMI) that proposes to modify Diversions 156 and 209 on the East Kōlea Stream; Diversion 232 on the Kaʻaiea Stream; Diversion 142 on the ʻOʻopuola Stream; Diversions 168, 267, 255, and 187 on the Nailiilihaele Stream; Diversion 177 on the Hānawana Stream; and Diversions 145, 243, 144, 236 and 244 on the Hoʻolawa Stream to fix leaks, add baseflow, and provide habitat connectivity, East Maui.

LOCATION: East Kōlea, Kaʻaiea, ʻOʻopuola, Nailiilihaele, Hānawana, and Hoʻolawa Streams, Maui. See **Figure 1**.

Figure 1: East Kōlea (156, 209), Kaʻaiea (232), ʻOʻopuola (142), Nailiilihaele (168, 267, 255, 187), Hānawana (177), and Hoʻolawa (145, 243, 144, 236, 244) Streams, Maui.

BACKGROUND

In 1989, EMI registered Diversions 156, 209, 232, 142, 168, 267, 255, 187, 177, 145, 243, 144, 236, and 244 consisting of concrete masonry and one (1) is a PVC pipe. The divertible capacity of all sources averaged over 350 million gallons per day (mgd). The water was used for municipal, industrial, irrigation and agricultural purposes.

On November 15, 2022, the Commission approved a petition to amend the interim instream flow standards (IIFS) for the surface water hydrologic units of Hoʻolawa (6035), Waipiʻo (6036), Hoalua (6038), Hānawana (6039), Kailua (6040), Nailiilihaele (6041), Puehu (6042), ʻOʻopuola (6043), Kaʻaiea (6044), Punaluʻu (6045), Kōlea (6046), East Maui. In order to implement the approved IIFS for the subject streams, EMI was required to modify Diversions 156, 209, 232, 142, 168, 267, 255, 187, 177, 145, 243, 144, 236, and 244 to fix leaks and provide for habitat connectivity through increased streamflow at the points of diversion. The staff submittal can be viewed online at https://files.hawaii.gov/dlnr/cwrm/submittal/2022/sb20221115B5.pdf.

On March 15, 2023, East Maui Irrigation Co., LLC filed a complete SDWP.6011.6 application that can be viewed online at: https://files.hawaii.gov/dlnr/cwrm/swreview/SDWP_6011_6.pdf.

STREAM DESCRIPTION

East Kōlea Stream. The National Hydrography Dataset (NHD) classified the East Kōlea Stream as perennial and the Division of Aquatic Resources (DAR) classified it as perennial. The total drainage area is 0.56 square miles with a maximum basin elevation of 1,870 feet and mean annual precipitation of 153 inches. The longest flow path is 1.6 miles long.

Kaʻaiea Stream. The NHD classified the Kaʻaiea Stream as intermittent, and DAR classified it as perennial. The total drainage area is 0.9 square miles with a maximum basin elevation of 3,240 feet and mean annual precipitation of 190 inches. The longest flow path is 5.61 miles long.

ʻOʻopuola Stream. The NHD classified the ʻOʻopuola Stream as intermittent, and DAR classified it as perennial. The total drainage area is 1.0 square mile with a maximum basin elevation of 2,030 feet and mean annual precipitation of 121 inches. The longest flow path is 4.0 miles long.

Nailiilihaele Stream. The NHD classified the Nailiilihaele Stream as perennial, and DAR classified it as perennial. The total drainage area is 4.7 square miles with a maximum basin elevation of 6,760 feet and mean annual precipitation of 177 inches. The longest flow path is 5.4 miles long.

Hānawana Stream. The NHD classified the Hānawana Stream as perennial, and DAR classified it as perennial. The total drainage area is 0.6 square miles with a maximum basin elevation of 1,540 feet and mean annual precipitation of 121 inches. The longest flow path is 2.7 mile long.

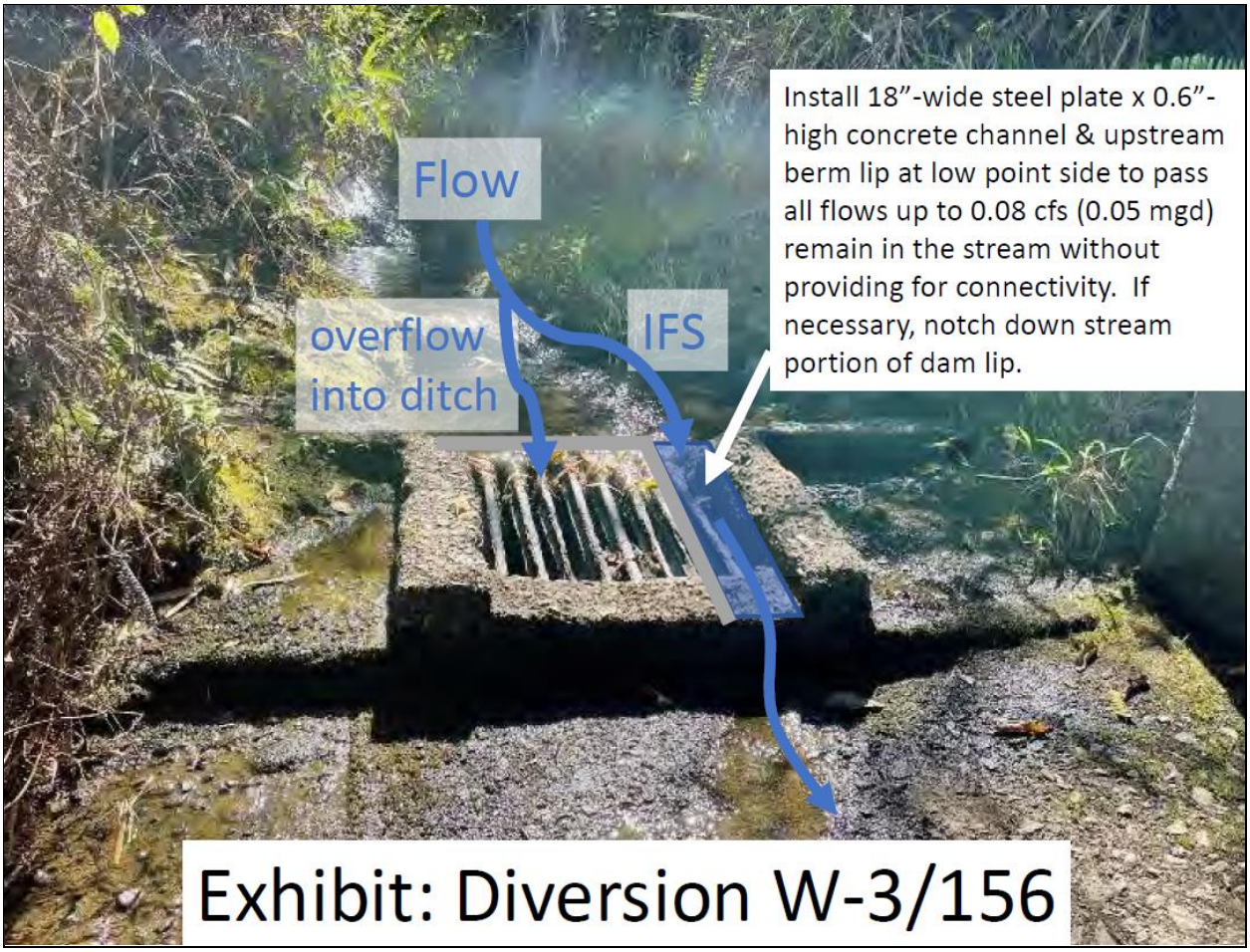
Hoʻolawa Stream. The NHD classified the Hoʻolawa Stream as intermittent, and DAR classified it as perennial. The total drainage area is 3.6 square miles with a maximum basin elevation of 3,510 feet and a mean annual precipitation of 148 inches. The longest flow path is 9.0 miles long.

PROJECT DESCRIPTION

With the exception of stream rocks, materials removed from diversion structures will be transported off-site for proper disposal. Demolition, concrete forming and pouring will be done primarily by hand. Heavy equipment may be utilized only when necessary. Facilities to temporarily divert flow around work areas (such as sand bags, pipes) and other best management practices will be used to control water pollution. The expected construction time is 3 to 6 months, depending on weather conditions.

East Kōlea Stream, Hydrologic Unit 6046

EMI Div ID	CWRM Div ID	CWRM Recommendation/Action (From Nov. 15, 2022)	Proposed Action
W-3	156	**2.1 Recommendation:** Modify intake such that all flows up to 0.08 cfs flow past diversion to remain in stream without providing for connectivity. **2.1 Action:** Order EMI to modify intakes such that all flows up to 0.08 cfs (0.05 mgd) flow past Div. 156.	Install 18-in wide steel plate by 0.6-in high concrete channel and upstream berm lip at low point across grate. If necessary, notch downstream portion of dam lip.



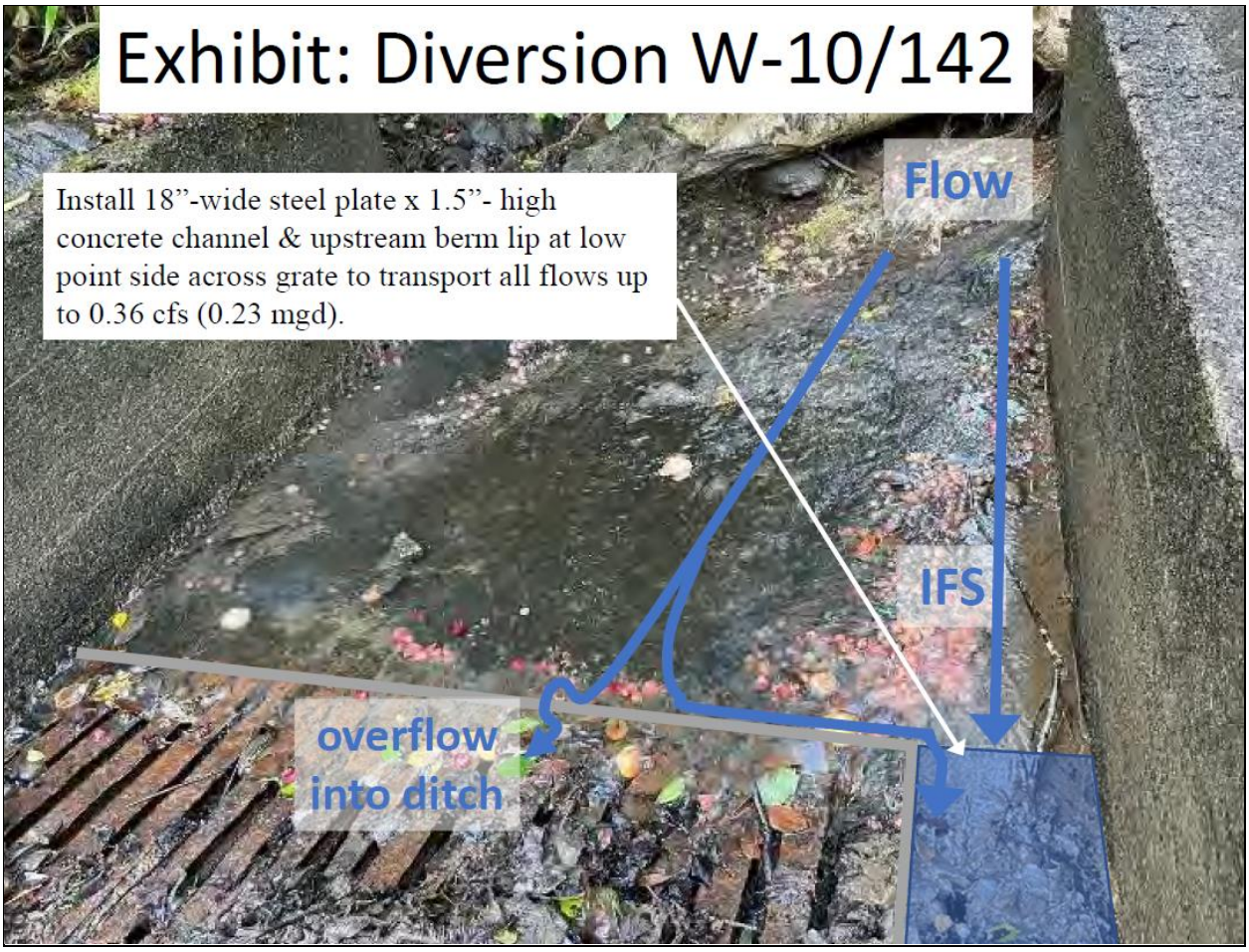
EMI Div ID	CWRM Div ID	CWRM Recommendation/Action (From Nov. 15, 2022)	Proposed Action
NH-2	209	**2.1 Recommendation:** Modify intake such that all flows up to 0.08 cfs flow past diversion to remain in stream without providing for connectivity. **2.1 Action:** Order EMI to modify intakes such that all flows up to 0.08 cfs (0.05 mgd) flow past Div. 209.	Install 18-in wide steel plate by 0.6-in high concrete channel and upstream berm lip at low point side to pass all flows up to 0.08 cfs (0.05 mgd) to remain in the stream without providing for connectivity.

Kaʻaiea Stream, Hydrologic Unit 6044

EMI Div ID	CWRM Div ID	CWRM Recommendation/Action (From Nov. 15, 2022)	Proposed Action
S-11	232	**2.3 Recommendation:** Continual flow past Div. 232: 18-inch plate across grate to transport all baseflow up to 1.8 cfs; fix leaks in wing wall. **2.3.2 Action:** Order EMI to modify the intake such that all flows up to 1.8 cfs (1.12 mgd) flow past Div. 232 and provide for habitat connectivity.	Install 18-in wide steel plate by 4.3-in high concrete channel and upstream berm lip(s) at low point across grate to pass 1.8 cfs (1.12 mgd). Where necessary, fix leaks in wing wall.

ʻOʻopuola Stream, Hydrologic Unit 6043

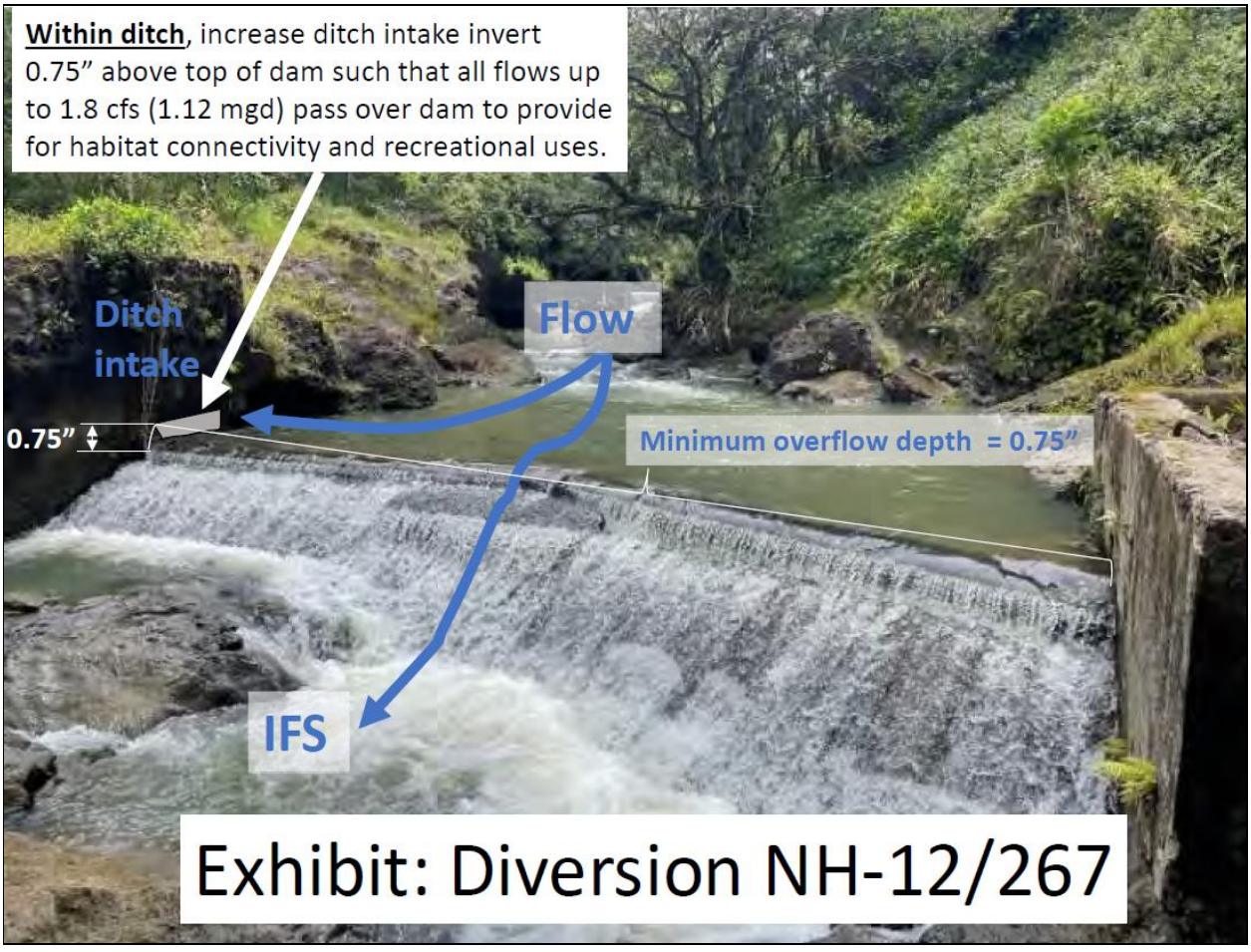
EMI Div ID	CWRM Div ID	CWRM Recommendation/Action (From Nov. 15, 2022)	Proposed Action
W-10	142	**2.4 Recommendation:** Continual flow past Div 142: pipe past intake from pool above to transport all flows up to 0.36 cfs. **2.4.4 Action:** Order EMI to modify the intake such that all flows up to 0.36 cfs (0.23 mgd) flow past Div 142.	Install 18-in wide steel plate by 1.5-in high concrete channel and upstream berm lip at low point side across grate to transport all flows up to 0.36 cfs (0.23 mgd).

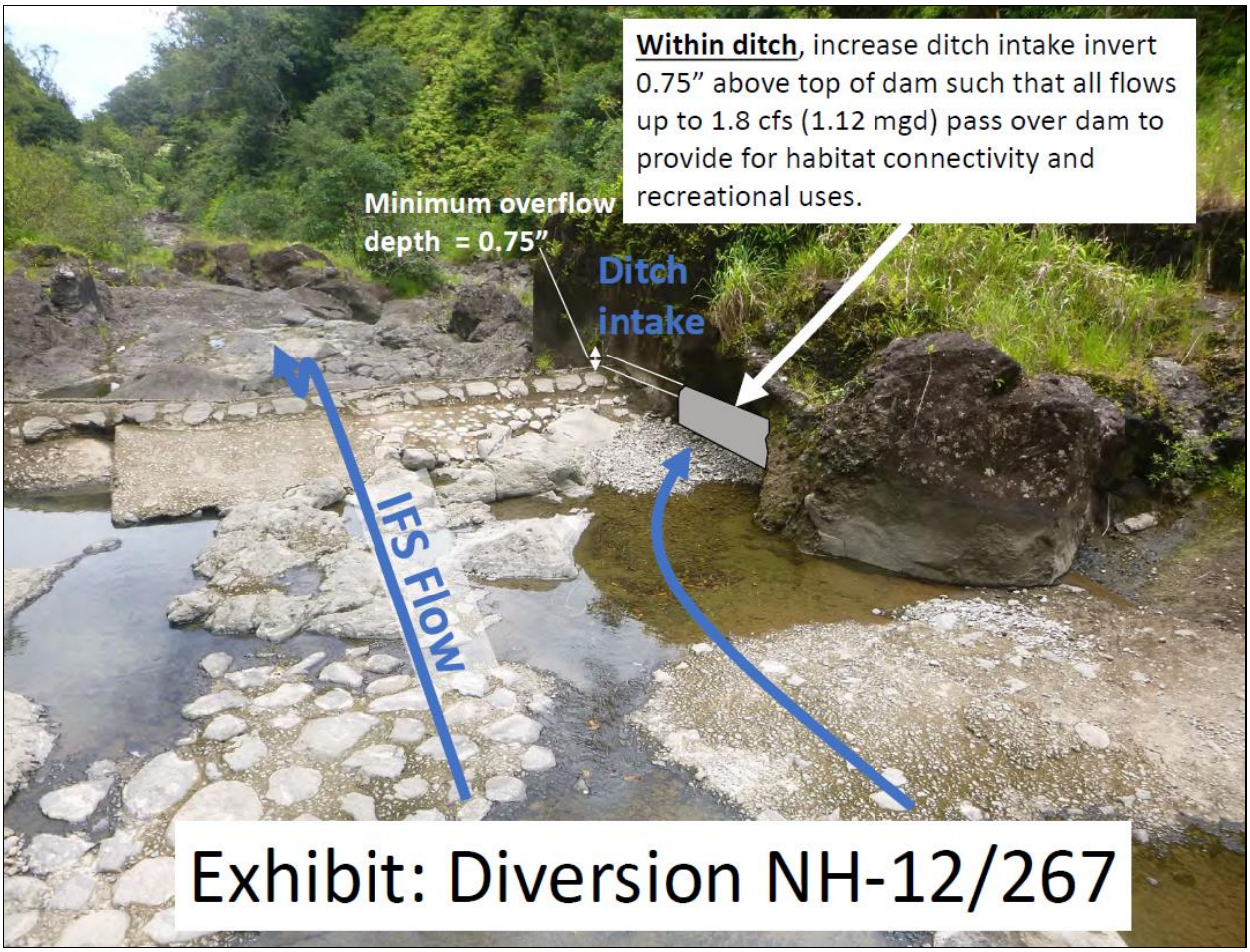


Nailiilihaele Stream, Hydrologic Unit 6041

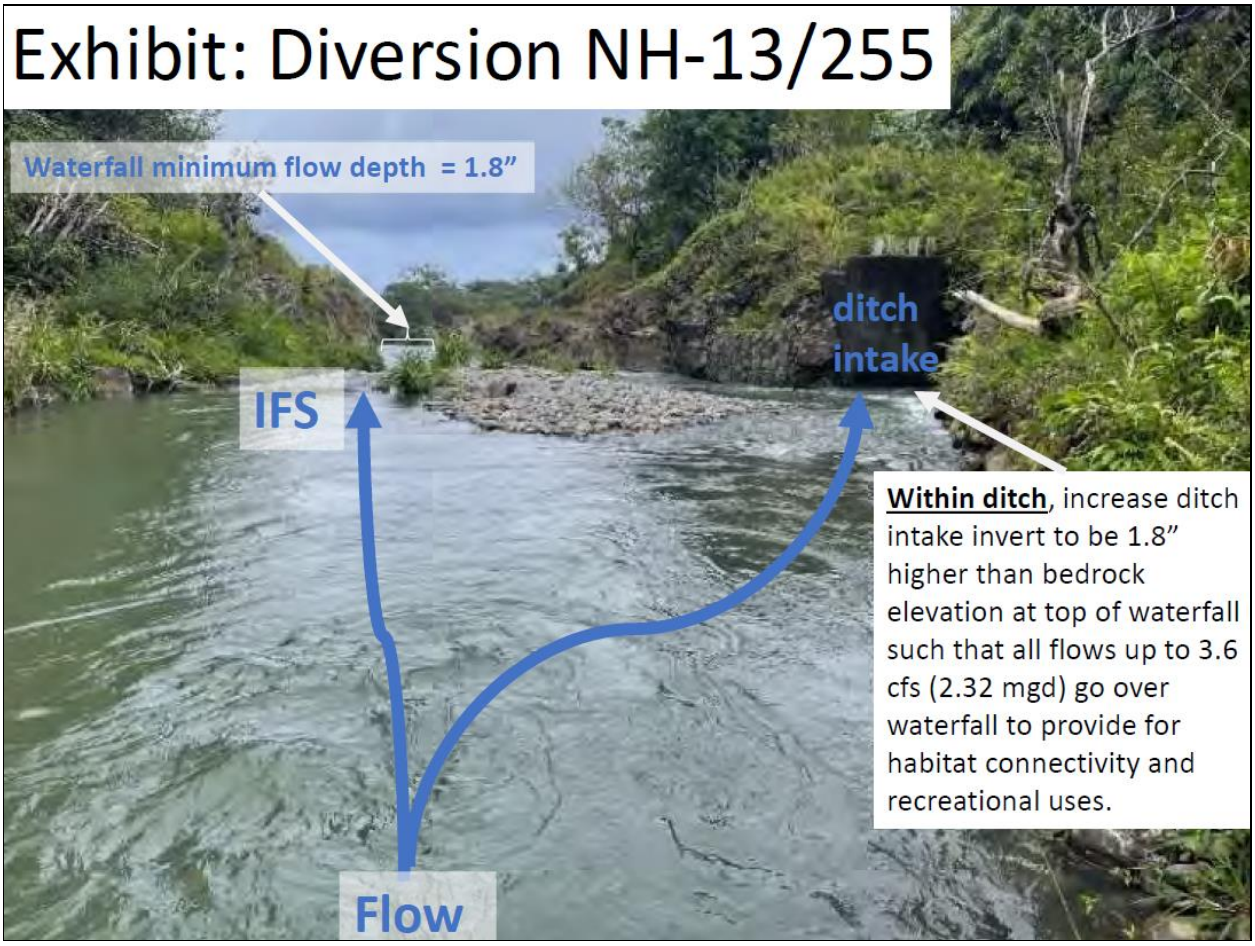
EMI Div ID	CWRM Div ID	CWRM Recommendation/Action (From Nov. 15, 2022)	Proposed Action
W-14	168	**2.6 Recommendation:** Continual flow past Div 168: 18-inch plate across grate to provide connectivity. **2.6.1 Action:** Order EMI to modify the intake such that 20% of all flows flow past Div 168 and provide for habitat connectivity and recreational uses.	Install steel plate to cover 20% of grated area with 1-in high concrete channel and upstream berm lip(s) at low point across grate to transport 20% of all flows and provide connectivity and recreational uses.

EMI Div ID	CWRM Div ID	CWRM Recommendation/Action (From Nov. 15, 2022)	Proposed Action
NH-12	267	**2.6 Recommendation:** Continual flow past Div 267: increase intake invert to maintain flow past dam (e.g., build a "chimney intake" or seal intake). **2.6.2 Action:** Order EMI to modify the intake such that all flows up to 1.8 cfs (1.12 mgd) flow past Div 267 and provide for habitat connectivity and recreational uses.	Within ditch, increase ditch intake invert 0.75-in above top of dam such that all flows up to 1.8 cfs (1.12 mgd) pass over dam to provide for habitat connectivity and recreational uses.

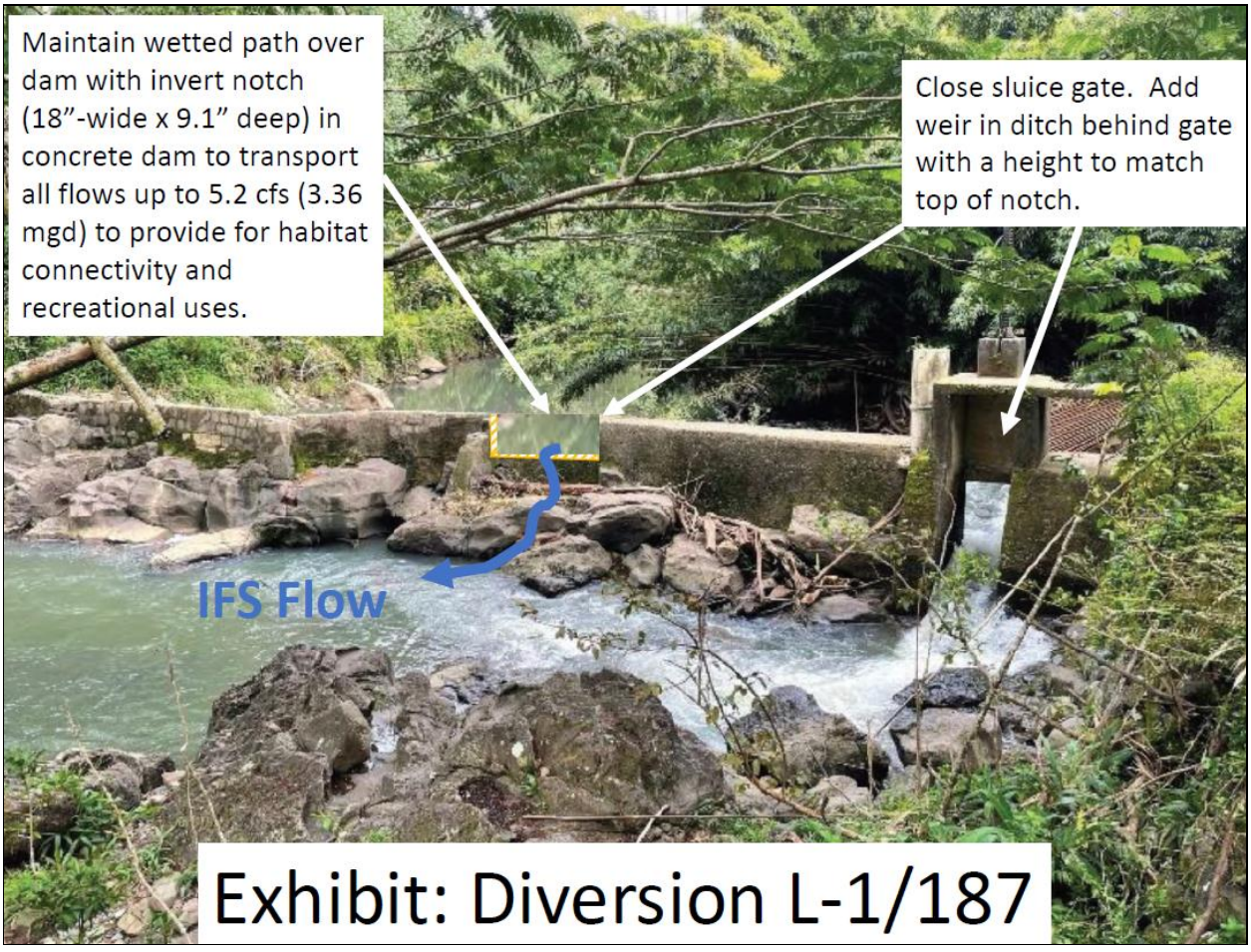



Within ditch, increase ditch intake invert 0.75" above top of dam such that all flows up to 1.8 cfs (1.12 mgd) pass over dam to provide for habitat connectivity and recreational uses.
Minimum overflow depth = 0.75"
Ditch intake
IFS Flow
Exhibit: Diversion NH-12/267

EMI Div ID	CWRM Div ID	CWRM Recommendation/Action (From Nov. 15, 2022)	Proposed Action
NH-13	255	**2.6 Recommendation:** Continual flow past Div 255: increased invert at intake (e.g., build a "chimney intake") or seal intake. **2.6.3 Action:** Order EMI to modify the intake such that all flows up to 3.6 cfs (2.32 mgd) flow past Div 255 to provide for habitat connectivity and recreational uses.	Within ditch, increase ditch intake invert to be 1.8-in higher than bedrock elevation at top of waterfall such that all flows up to 3.6 cfs (2.32 mgd) go over waterfall to provide for habitat connectivity and recreational uses.



EMI Div ID	CWRM Div ID	CWRM Recommendation/Action (From Nov. 15, 2022)	Proposed Action
L-1	187	**2.6 Recommendation:** Continual flow past Div 187: maintain wetted path over dam via notch in concrete to transport all flows up to 5.2 cfs downstream. **2.6.4 Action:** Order EMI to modify the intake such that all flows up to 5.2 cfs (3.36 mgd) flow past Div 187 to provide for habitat connectivity.	Maintain wetted path over dam with invert notch (18-in-wide x 9.1-in deep) in concrete dam to transport all flows up to 5.2 cfs (3.36 mgd) to provide for habitat connectivity and recreational uses. Close sluice gate. Add weir in ditch behind gate with a height to match top of notch.



Hānawana Stream, Hydrologic Unit 6039

EMI Div ID	CWRM Div ID	CWRM Recommendation/Action (From Nov. 15, 2022)	Proposed Action
L-3	177	**2.8 Recommendation:** Modification of existing pipe across Div 177 to prevent clogging. **2.8.1 Action:** Order EMI to modify the bypass pipe across Lowrie Ditch to maintain a continual flow of water to meet downstream riparian uses.	Increase pipe diameter to 8-in to prevent clogging and maintain a continual flow of water to meet downstream riparian uses.

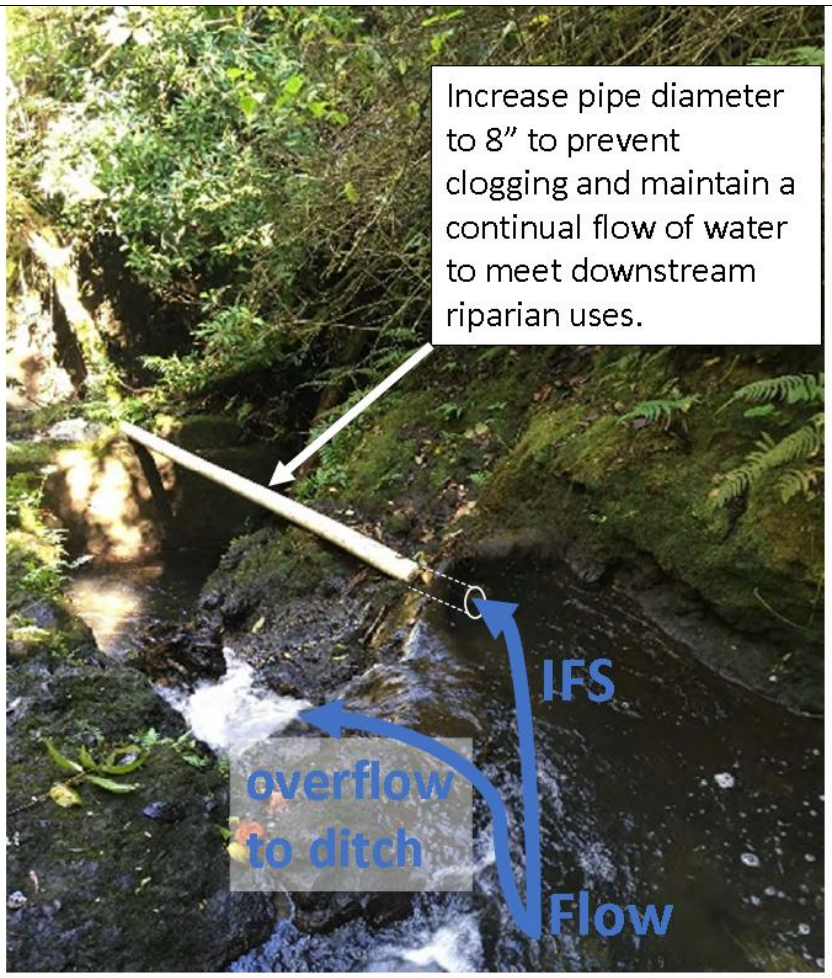


Exhibit: Diversion L-3/177

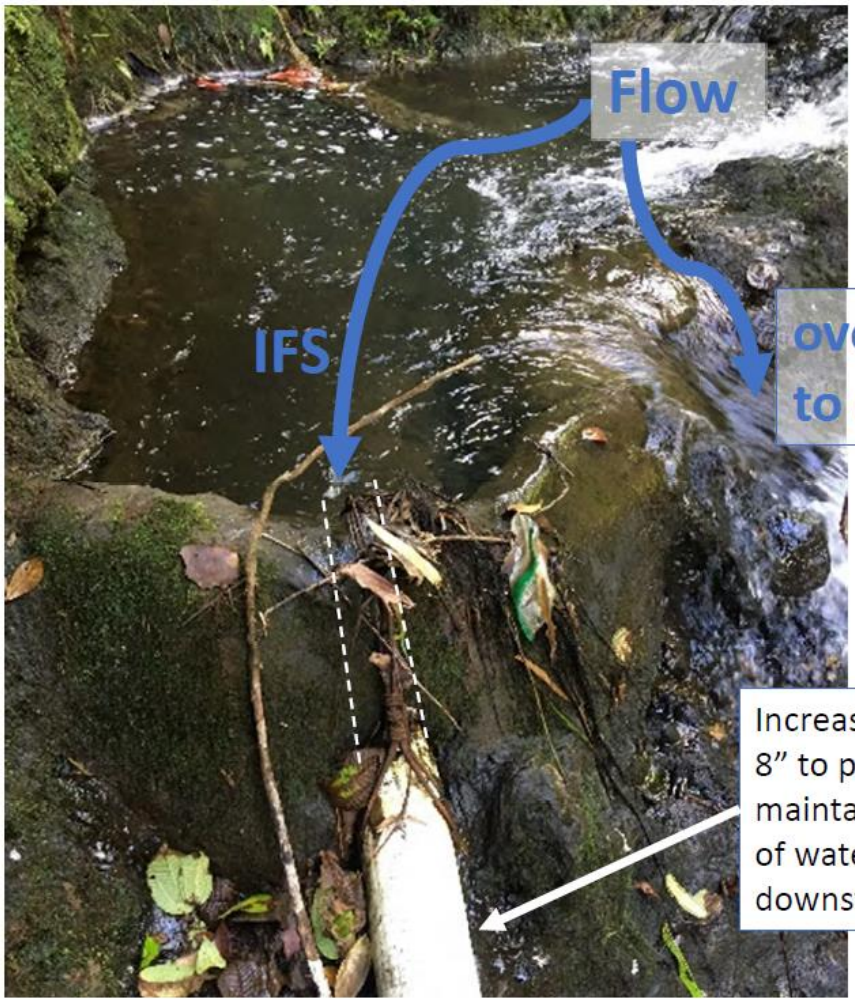
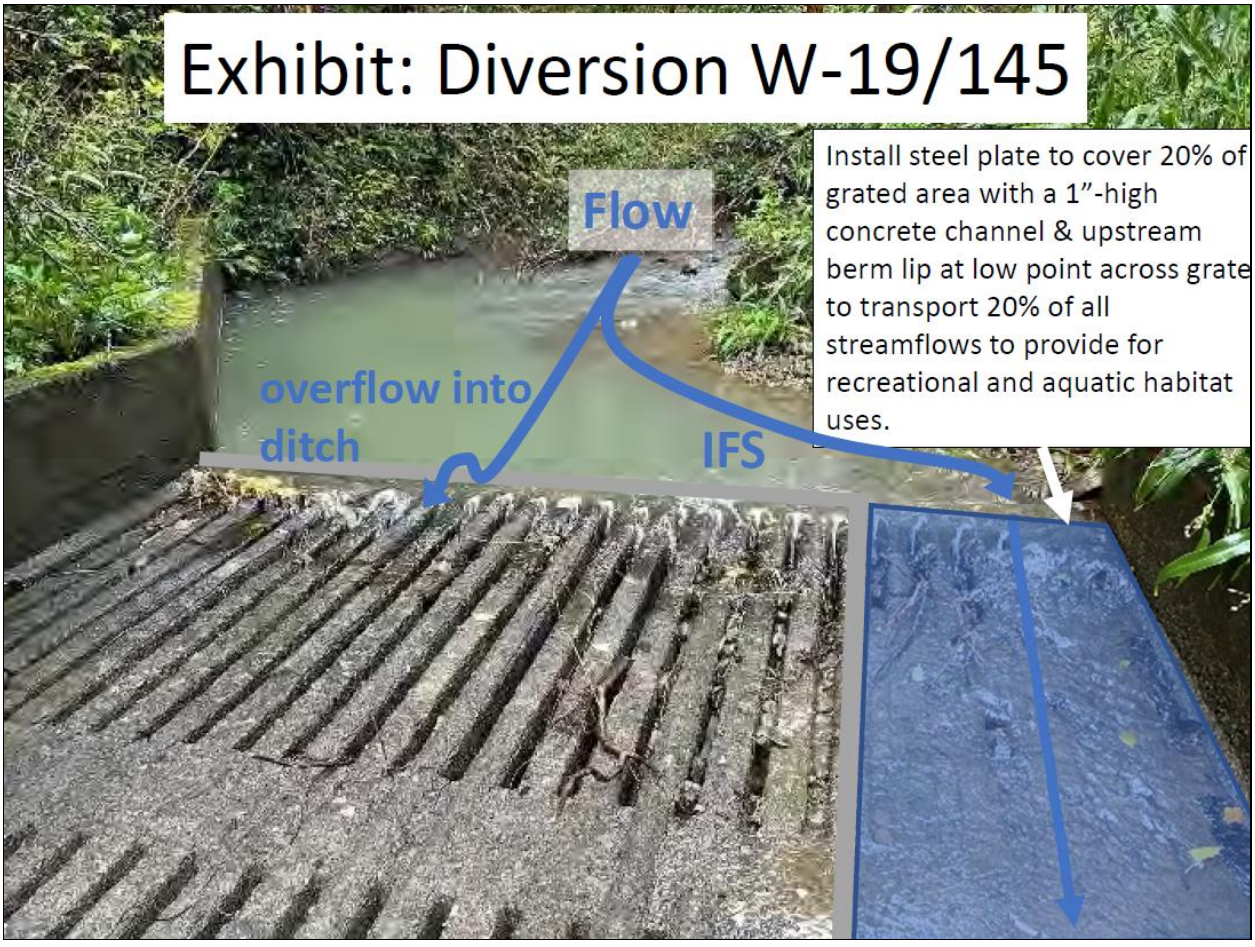


Exhibit: Diversion L-3/177

Hoʻolawa Stream, Hydrologic Unit 6035

EMI Div ID	CWRM Div ID	CWRM Recommendation/Action (From Nov. 15, 2022)	Proposed Action
W-19	145	**2.11 Recommendation:** Continual flow past Div 145: 18-inch plate across grate. **2.11.1 Action:** Order EMI to modify the intake such that a 20% of all streamflow flows past Div 145 to provide for recreational uses.	Install steel plate to cover 20% of grated area with a 1-in high concrete channel and upstream berm lip at low point across grate to transport 20% of all stream flows to provide for recreational and aquatic habitat uses.



EMI Div ID	CWRM Div ID	CWRM Recommendation/Action (From Nov. 15, 2022)	Proposed Action
L-12	243	**2.11 Recommendation:** Continual flow past Div 243: support current leakage underneath diversion dam with PVC piping from Lowrie ditch to ensure 0.7 cfs continues downstream. **2.11.5 Action:** Order EMI to modify the intake such that a continual flow of 0.7 cfs (0.45 mgd) flows below Div 243 to provide for recreational uses and downstream habitat.	Install 8" PVC piping at 0.29% slope and valve from Lowrie ditch to ensure 0.7 cfs (0.45 mgd) continues for recreational uses & downstream habitat [no connectivity] when sluice gate is closed.


Exhibit: Diversion L-12/243
Sluice gate
Install 8” PVC piping at 0.29% slope and valve from Lowrie ditch to ensure 0.7 cfs (0.45 mgd) continues for recreational uses & downstream habitat [no connectivity] when sluice gate is closed.
ditch
valve
IFS
PVC pipe

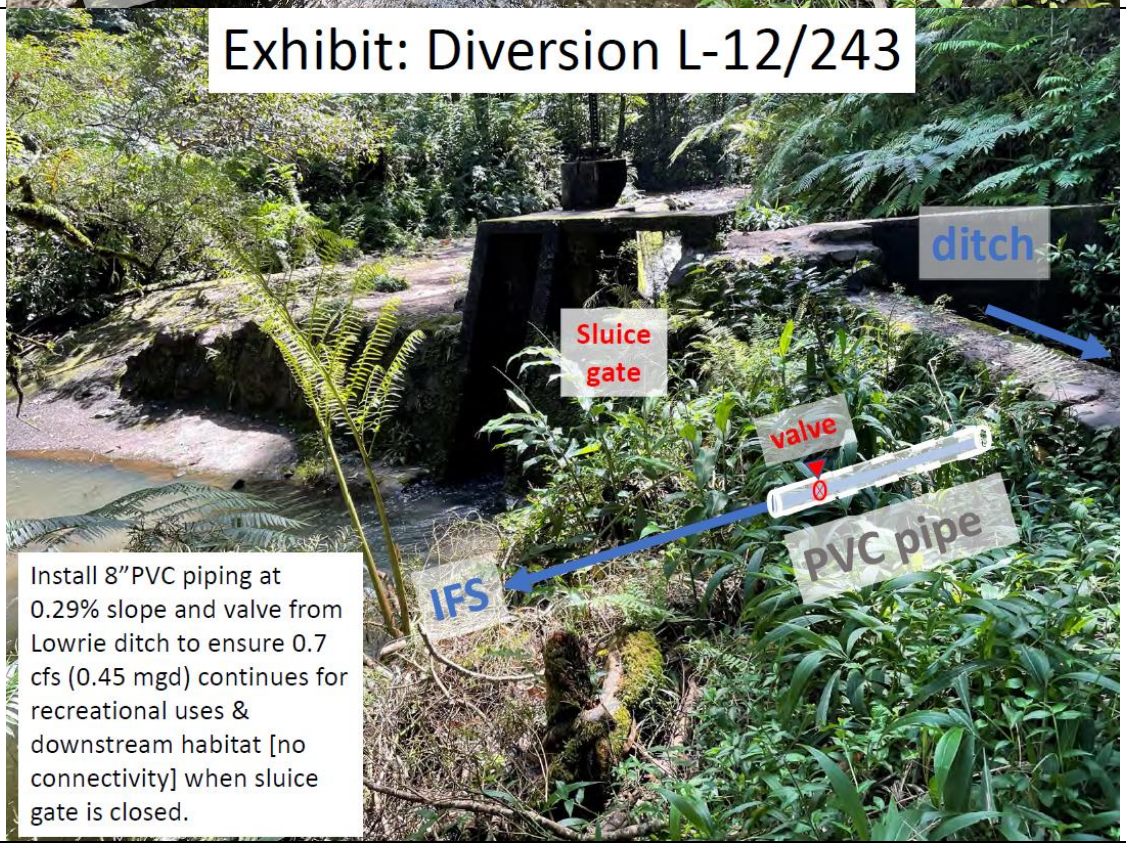
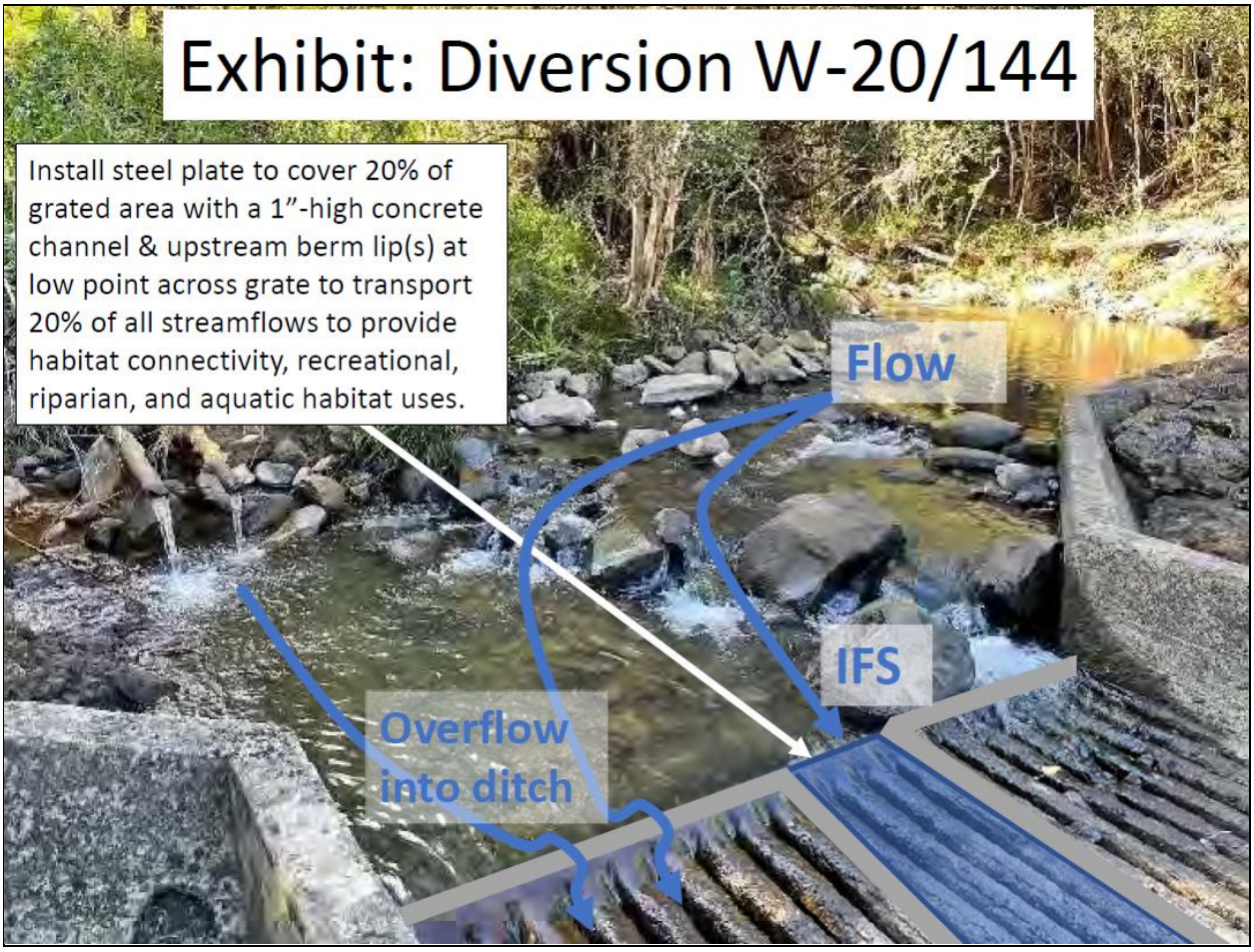
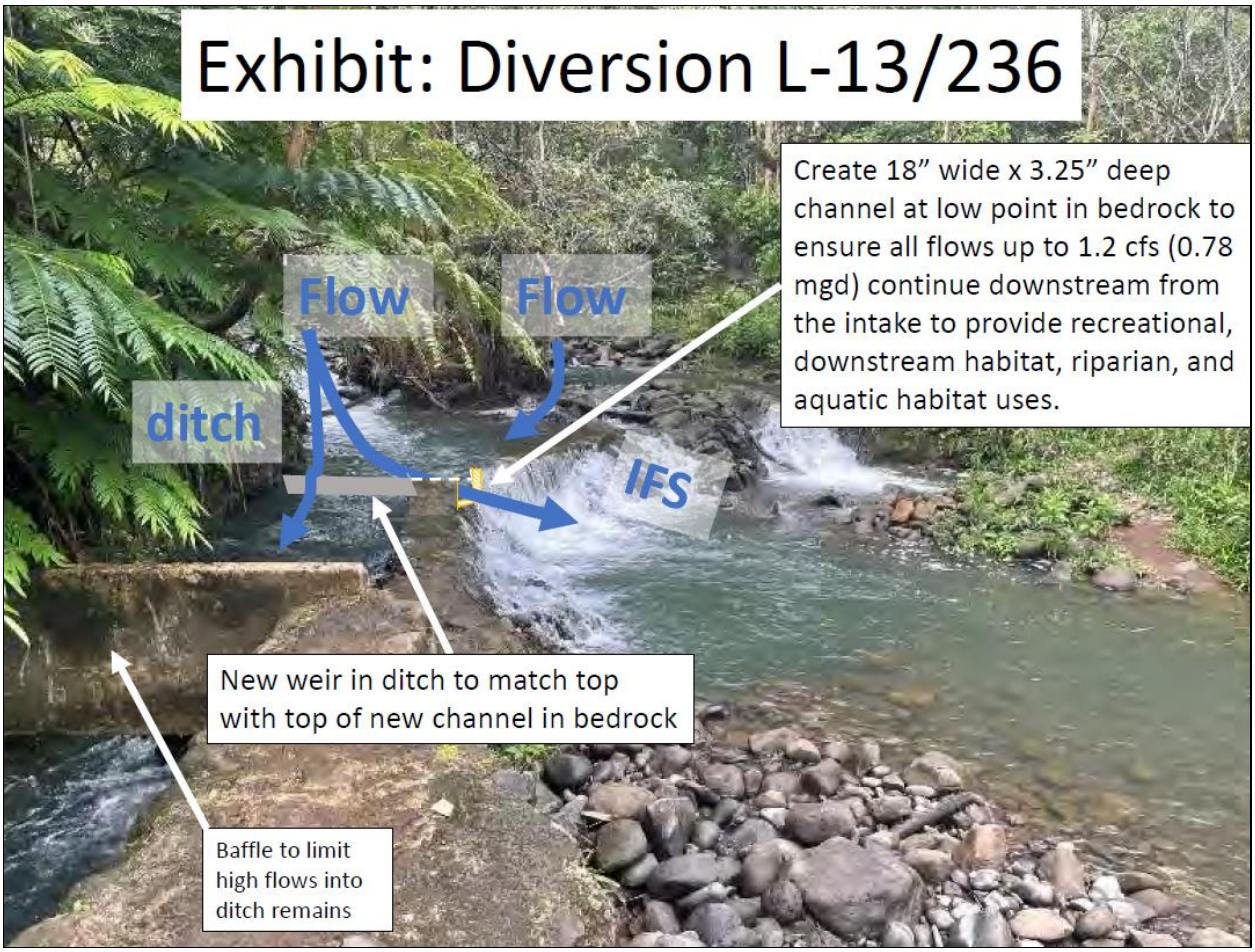


Exhibit: Diversion L-12/243
ditch
Sluice gate
valve
PVC pipe
IFS
Install 8”PVC piping at 0.29% slope and valve from Lowrie ditch to ensure 0.7 cfs (0.45 mgd) continues for recreational uses & downstream habitat [no connectivity] when sluice gate is closed.

EMI Div ID	CWRM Div ID	CWRM Recommendation/Action (From Nov. 15, 2022)	Proposed Action
W-20	144	**2.11 Recommendation:** Continual flow past Div 144: 18-inch plate. **2.11.2 Action:** Order EMI to modify the intake such that a 20% of all streamflow flows past Div 144 to provide for habitat connectivity and recreational uses.	Install steel plate to cover 20% of grated area with a 1-in high concrete channel & upstream berm lip(s) at low point across grate to transport 20% of all streamflows to provide habitat connectivity, recreational, riparian, and aquatic habitat uses.



EMI Div ID	CWRM Div ID	CWRM Recommendation/Action (From Nov. 15, 2022)	Proposed Action
L-13	236	**2.11 Recommendation:** Continual flow past Div 236: support current bypass channel in bedrock by ensuring all flows up to 1.2 cfs continue downstream from the intake. **2.11.6 Action:** Order EMI to modify the intake such that all streamflow up to 1.2 cfs (0.78 mgd) flows below Div 236 to provide for recreational uses and downstream habitat.	Create 18-in wide x 3.25-in deep channel at low point in bedrock to ensure all flows up to 1.2 cfs (0.78 mgd) continue downstream from the intake to provide recreational, downstream habitat, riparian, and aquatic habitat uses. New weir in ditch to match top with top of new channel in bedrock. Baffle to limit high flows into ditch remains.



EMI Div ID	CWRM Div ID	CWRM Recommendation/Action (From Nov. 15, 2022)	Proposed Action
NH-20	244	**2.11 Recommendation:** Continual flow past Div 244: 18-inch plate. **2.3.2 Action:** Order EMI to modify the intake such that a 20% of all streamflow flows past Div 244 to provide for downstream habitat and recreational uses.	Install steel plate to cover 20% of grated area with a 1-in high concrete channel and upstream berm lip at low point across grate to transport 20% of all flows to provide downstream habitat connectivity, recreational, riparian, and aquatic habitat uses.

AGENCY REVIEW COMMENTS

Maui County, Planning Department: No comments received.

Department of Hawaiian Home Lands (DHHL): No comments received.

Department of Land and Natural Resources (DLNR), Aha Moku: No comments received.

DLNR, Aquatic Resources: The Division of Aquatic Resources, Maui Office, Stream monitoring team appreciates the efforts to come into compliance with the November 2022 CWRM IFS decisions. Maintaining consistent and constant flow in all these native stream habitats is a good thing, and DAR staff looking forward to seeing the alterations put in place as quickly and with as little impacts to the stream habitat as is possible. Moving forward, the stream and estuary monitoring staff looks forward to working with East Maui Irrigation and CWRM staff to ensure continuous flow to these streams, and to measure the effects these changes make to riparian habitat, native stream flora and fauna, and to nearshore coastal estuarine habitats. Please keep DAR Maui staff updated on the progress as this work proceeds. See **Exhibit 1**.

CWRM Staff Response: Comments will be added as a special condition.

DLNR, Engineering: The rules and regulations of the National Flood Insurance Program (NFIP), Title 44 of the Code of Federal Regulations (44CFR), are in effect when development falls within a Special Flood Hazard Area (high-risk Areas). Be advised that 44CFR, Chapter 1, Subchapter B, Part 60 reflects the minimum standards as set forth by the NFIP. Local community flood ordinances may stipulate higher standards that can be more restrictive and would take precedence over the minimum NFIP standards. The owner of the project property and/or their representative is responsible to research the Flood Hazard Zone designation for the project. Flood Hazard Zones are designated on FEMA's Flood Insurance Rate Maps (FIRM). The official FIRMs can be accessed through FEMA's Map Service Center (msc.fema.gov). Our Flood Hazard Assessment Tool (FHAT) (http://gis.hawaiinfip.org/fhat/) could also be used to research flood hazard information. See **Exhibit 2**.

CWRM Staff Response: Noted. In addition, all diversions appear to be in Flood Zone X, which are areas determined to be outside the 0.2% annual chance floodplain.

DLNR, Forestry and Wildlife (DOFAW): Native bats, birds, and damselflies inhabit the area. Site clearing should be timed to avoid disturbance to bats during their birthing and pup rearing season (June 1 through September 15). Barbed wire should also be avoided for any construction because bats can become ensnared and killed by such fencing material during flight. Permanent lighting also poses a risk of seabird attraction, and as such should be minimized or eliminated to protect seabird flyways and preserve the night sky. DOFAW recommends using native plant species for landscaping that are appropriate for the area. DOFAW recommends minimizing the movement of plant or soil material between worksites, and other recommendations. See **Exhibit 3**.

CWRM Staff Response: Comments will be added as a special condition.

DLNR, Historic Preservation (SHPD): SHPD concurrence not received.

CWRM Staff Response: Approval of the application is subject to SHPD Project No. 2023PRO1452.001 concurrence. If SHPD requires conditions, delegation authority to Deputy Director will be added as a special condition.

DLNR, Land Division: No comments received.

DLNR, Office of Conservation and Coastal Lands (OCCL): No comments received.

CWRM Staff Response: Diversions 156, 209, 232, 142, 168, 267, 145, 144, 236, and 244 are located in the conservation district. Project is exempt from Hawaii Revised Statutes, Chapter 343 per the Comprehensive Exemption List for the Department of Land and Natural Resources review and concurred upon by the Environmental Council on November 10, 2020. https://files.hawaii.gov/dbedt/erp/Agency_Exemption_Lists/State-Department-of-Land-and-Natural-Resources-Exemption-List-2020-11-10.pdf.

DLNR, State Parks: No comments received.

Dept. of Health (DOH), Clean Water Branch: The DOH standard comments can be reviewed on their website at: https://health.hawaii.gov/cwb/files/2018/05/Memo-CWB-Standard-Comments.pdf.

CWRM Staff Response: The lead agency for the protection of water quality is the Department of Health, Clean Water Branch, which administers the Federal Clean Water Act (33 U.S.C. §1251 et seq.) and the State Water Pollution Act (HRS Ch. 342D; HAR Ch. 11-54 Water Quality Standards; and HAR Ch. 11-55 Water Pollution Control). HAR §11-54-1 through §11-54-8 defines Best Management Practices and water quality criteria applicable to inland and nearshore waters and are based on the Federal Clean Water Act. HAR Ch. 11-55 Appendix C defines discharges of storm water associated with construction activity. HRS 174C-66 states that the DOH oversees the State's water quality control program.

Office of Hawaiian Affairs: No comments received.

US Army Corps of Engineers: Our understanding is that the proposed projects in the SCAP applications are for activities to maintain existing irrigation ditches that flow to ongoing agriculture. Discharges of fill for maintenance of existing irrigation ditches are exempt from regulation under Section 404 of the CWA (323.4.a.(3)); therefore, no permit from the Corps of Engineers is required for the activities described in the four SCAP applications, including 6011.6. See **Exhibit 4**.

US Fish and Wildlife Service (FWS): No comments received.

Public Comments: No comments received.

TRADITIONAL AND CUSTOMARY PRACTICES

1) The identity and scope of cultural, historical, or natural resources in which traditional and customary native Hawaiian rights are exercised in the area.

   The Applicant stated, "See:
   1) County of Maui Planning Department, Kalo Kanu O Ka`aina: A Cultural Landscape Study of Keʻanae and Wailuanui, Island of Maui, July 1995,
   2) Kepa Maly and Onaona Maly, Wai O Ke Ola: He Wahi Moʻolelo No Maui Hikina, 2001,
   3) CWRM November 15, 2022 Item B-5,
   4) IFSAR Oopuola 6043 June 2020 PR-2020-11,
   5) IFSAR Kailua 6040 June 2020 PR-2020-08,
   6) IFSAR Waipio 6036 June 2020 PR-2020-05,
   7) IFSAR Hoolawa 6035 June 2020 PR-2020-04,
   8) Proposed Lease (Water Lease) for the Nāhiku, Keʻanae, Honomanū, and Huelo License Areas Corrected Final Impact Statement vol. 3, September 24, 2021."

   CWRM Staff Response: Cultural, historical, or natural resources which support traditional and customary native Hawaiian rights are generally protected on undeveloped land (PASH, 1993). No comments were received from DLNR ʻAha Moku. No comments from the public. Commission staff identified no historic sites. The references provided by the Applicant document native traditional and customary practices, historical accounts, oral interviews with families of the East Maui region.

2) The extent to which those resources, including traditional and customary native Hawaiian rights, will be affected or impaired by the proposed action.

   The Applicant stated, "The proposed actions will have positive impacts on stream restoration due to abandonments establishing continuous flow through streams as determined by the CWRM at its November 15, 2022 action. This in turn will have a positive effect on traditional and customary Native Hawaiian rights downstream of the diversions."

   CWRM Staff Response: Concur.

3) What feasible action, if any, could be taken by the Commission in regards to this application to reasonably protect native Hawaiian rights.

   The Applicant stated, "The CWRM's expedited approval of this application will advance the actions taken by CWRM on November 15, 2022 Item B-5."

CWRM Staff Response: No further action as identified.

HRS CHAPTER 343 – ENVIRONMENTAL ASSESSMENT (EA) COMPLIANCE

Under Hawaii Revised Statutes (HRS) §343-5(a), an EA shall be required for actions, as summarized in part below, that propose:

(1) use of state land or county lands, or the use of state or county funds;
(2) use within any land classified as a conservation district;
(3) use within a shoreline area;
(4) use within any historic site as designated in the National Register or Hawaii Register;
(5) use within the Waikiki area of Oʻahu;
(6) any amendments to existing county general plans where the amendment would result in designations other than agriculture, conservation, or preservation;
(7) any reclassification of any land classified as a conservation district;
(8) construction of new or the expansion or modification of existing helicopter facilities within the State, that may affect: (A) any land classified as a conservation district; (B) a shoreline area; or (C) any historic site as designated in the National Register or Hawaii Register;
(9) any (A) wastewater treatment unit, except an individual wastewater system or a wastewater treatment unit serving fewer than fifty single-family dwellings or the equivalent; (B) Waste-to-energy facility; (C) Landfill; (D) Oil refinery; or (E) Power-generating facility.

CWRM Staff Response: The proposed action triggers an EA because Diversion Nos. 156, 209, 232, 142, 168, 267, 145, 144, 236, and 244 are located in the Conservation District. However, per Hawaii Administrative Rule (HAR) §11-200.1-15(a) some actions, because they will individually and cumulatively probably have minimal or no significant effects, can be declared exempt from the preparation of an EA.

The subject project is exempt from the preparation of an environmental assessment in accordance with HAR §11-200.1-15(c)(1), operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor change of use beyond that previously existing.

The project is exempt from the preparation of an environmental assessment per HAR §11-200.1-15(c)(6) and falls under Exemption Class 6 of the Comprehensive Exemption List for the Commission, reviewed and concurred upon by the Environmental Council on January 5, 2021, providing for the "Demolition of structures, except those structure that are listed on the national register or Hawaii Register of Historic Places." Specifically, under Part 1, Item 3, "Demolition and removal or existing structures, facilities, utilities, and other improvements, except those structures located on any historic site as designated in the National Register or Hawaii Register as provide for in the National Historic Preservation Act of 1966, 16 U.S.C §§470 et. seq., as amended, or HRS Chapter 6E."

STAFF REVIEW

Review of the permit application by Commission staff is subject to the consideration of the legal authorities cited in **Exhibit 6**.

HAR §13-168-32(d) sets out the general criteria for ruling on SDWP applications.

(1) The quantity and quality of the stream water or the stream ecology shall not be adversely affected.

CWRM Staff Response: The project proposes to fix leaks, add baseflow back into the streams, and provide habitat connectivity. With the exception of stream rocks, materials removed from diversion structures will be transported off-site for proper disposal. Demolition, concrete forming and pouring will be done primarily by hand. Heavy equipment may be utilized only when necessary and are subject to staff's recommended special conditions. Facilities to temporarily divert flow around work areas (such as sandbags, pipes) and other best management practices will be used to control water pollution.

(2) Where instream flow standards or interim instream flow standards have been established pursuant to HAR Chapter 13-169, no permit should be granted for any diversion works which diminishes the quantity or quality of stream water below the minimum established to support identified instream uses, as expressed in the standards.

CWRM Staff Response: HRS §174C-71 and HAR §13-169-36, requires the Commission to protect stream channels from alteration whenever practicable to provide for fishery, wildlife, recreational, aesthetic, scenic, and other beneficial instream uses. The interim instream flow standards for the subject streams were amended by Commission action on November 15, 2022, and these actions were required to restore streamflow in support of the amended standards.

(3) The proposed diversion works shall not interfere substantially and materially with existing instream or non-instream uses or with diversion works previously permitted.

CWRM Staff Response: The project proposes to fix leaks, add baseflow back into the streams, and provide habitat connectivity and will not interfere with existing instream or non-instream uses or with diversion works previously permitted.

RECOMMENDATION

That the Commission:

1. Approve Stream Diversion Works Permit Application (SDWP.6011.6) submitted by the East Maui Irrigation, Company, LLC that proposes to modify Diversions 156 and 209 on the East Kōlea Stream; Diversion 232 on the Kaʻaiea Stream; Diversion 142 on the ʻOʻopuola Stream; Diversions 168, 267, 255, and 187 on the Nailiilihaele Stream; Diversion 177 on the Hānawana Stream; and Diversions 145, 243, 144, 236 and 244 on the Hoʻolawa Stream to fix leaks, add baseflow, and provide habitat connectivity subject to the standard conditions in **Exhibit 5** and the special conditions below.

    a. In conformance with the Division of Aquatic Resources recommendations, incorporated by reference in **Exhibit 1**, the permittee will keep DAR Maui staff updated on the progress regarding the continuous flow to these streams.

    b. In conformance with the Division of Forestry and Wildlife recommendations, incorporated by reference in **Exhibit 3**, site clearing should be timed to avoid disturbance to bats during their birthing and pup rearing season (June 1 through September 15). Barbed wire should also be avoided for any construction because bats can become ensnared and killed by such fencing material during flight. Permanent lighting also poses a risk of seabird attraction, and as such should be minimized or eliminated to protect seabird flyways and preserve the night sky. DOFAW recommends using native plant species for landscaping that are appropriate for the area. DOFAW recommends minimizing the movement of plant or soil material between worksites, and other recommendations.

    c. Modification of diversions are subject to SHPD Project No. 2023PRO1452.001 concurrence. If SHPD requires conditions, delegate to Deputy Director to attach those as conditions of abandonment.

    d. When the use of heavy machinery may be required in-stream, the Permittee shall employ the appropriate BMPs and conduct work only during low-flow conditions to minimize impacts to water quality.

Ola i ka wai,

DEAN D. UYENO
Acting Deputy Director

Exhibits:
1. DLNR, Division of Aquatic Resources letter, dated November 15, 2023.
2. DLNR, Engineering Division letter, dated November 21, 2023.

3. DLNR, Division of Forestry and Wildlife, dated February 5, 2024.
4. Army Corps of Engineers, email dated March 20, 2024.
5. Standard Stream Diversion Works Permit Conditions.
6. Legal Authorities.

APPROVED FOR SUBMITTAL:

DAWN N. S. CHANG
Chairperson

JOSH GREEN, M.D.
GOVERNOR | KE KIAʻĀINA
SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIAʻĀINA

STATE OF HAWAIʻI | KA MOKUʻĀINA ʻO HAWAIʻI
DEPARTMENT OF LAND AND NATURAL RESOURCES DIVISION OF AQUATIC RESOURCES
1151 PUNCHBOWL STREET, ROOM 330
HONOLULU, HAWAII 96813

Date: 11/15/2023
DAR # AR6506

DAWN N.S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
LAURA H.E. KAAKUA
FIRST DEPUTY
M. KALEO MANUEL
DEPUTY DIRECTOR - WATER
AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

MEMORANDUM

TO: Brian J. Neilson
DAR Administrator

FROM: Russell Sparks, Aquatic Biologist
Jody Kimmel, Hal Koike

SUBJECT: Review of an application for stream diversion alteration work (SDWP_6011_6) for 14 locations in East Maui. Alterations to come into compliance with CWRM order.

Request Submitted by: Mark Vaught

Location of Project: Various locations in East Maui. (East Kolea, Kaaiea, Oopuola, Nailiilihaele, Hanawana, Hoolawaliilii, Hoolawanui, and West Hoolawanui)

Brief Description of Project:

Stream Diversion Works Permit Application that outlines numerous alterations to existing diversion infrastructure in East Maui. Alterations are designed to come into compliance with CWRM orders from November 15, 2022. Alterations will establish continuous flow to comply with in-stream flow standards (IFS). Modifications depend on the specific diversion construction, but will mostly involve modifications to concrete, and metal grates. In most cases, metal plates will be installed over the low point of open diversion grates to block base flows from being diverted, and instead keeping those waters within the natural stream channel. In other cases, ditch intakes levels will be raised up to prevent overflow into diversions until IFS levels are reached.

Comments:

☐ No Comments ☒ Comments Attached

Thank you for providing DAR the opportunity to review and comment on the proposed project. Should there be any changes to the project plan, DAR requests the opportunity to review and comment on those changes.

Comments Approved: _____ Date: Nov 15, 2023
Brian J. Neilson
DAR Administrator

EXHIBIT 1

DAR# AR6506

Comments

The Maui Division of Aquatic Resources, Stream monitoring team appreciates the efforts to come into compliance with the November 2022 CWRM IFS decisions. Maintaining consistent and constant flow in all these native stream habitats is a good thing, and DAR staff looking forward to seeing the alterations put in place as quickly and with as little impacts to the stream habitat as is possible. Moving forward, the stream and estuary monitoring staff looks forward to working with East Maui Irrigation and CWRM staff to ensure continuous flow to these streams, and to measure the effects these changes make to riparian habitat, native stream flora and fauna, and to nearshore coastal estuarine habitats. Please keep DAR Maui staff updated on the progress as this work proceeds.

DEPARTMENT OF LAND AND NATURAL RESOURCES
ENGINEERING DIVISION

CWRM/M. Kaleo Manuel

Ref: Request for Comments, Stream Diversion Works Permit Application (SDWP.6011.6), East Maui Irrigation Co., LLC, Modification of Diversion Nos. 156, 209, 232, 142, 168, 267, 255, 187, 177, 145, 243, 144, 236, and 244, Fix Leaks and Provide Habitat Connectivity
Location: East Kōlea, Kaʻaiea, ʻOʻopuola, Nailiilihaele, Hānawana, and Hoʻolawa Streams, Maui
TMK(s): (2) 1-1-001:042, 050; 2-9-004:004; 2-9-012:029; 2-9-014:001, 004, and 009

COMMENTS

The rules and regulations of the National Flood Insurance Program (NFIP), Title 44 of the Code of Federal Regulations (44CFR), are in effect when development falls within a Special Flood Hazard Area (high-risk areas). Be advised that 44CFR, Chapter 1, Subchapter B, Part 60 reflects the minimum standards as set forth by the NFIP. Local community flood ordinances may stipulate higher standards that can be more restrictive and would take precedence over the minimum NFIP standards.

The owner of the project property and/or their representative is responsible to research the Flood Hazard Zone designation for the project. Flood Hazard Zones are designated on FEMA's Flood Insurance Rate Maps (FIRM). The official FIRMs can be accessed through FEMA's Map Service Center (msc.fema.gov). Our Flood Hazard Assessment Tool (FHAT) (fhat.hawaii.gov) could also be used to research flood hazard information.

If there are questions regarding the local flood ordinances, please contact the applicable County NFIP coordinating agency below:

- Oahu: City and County of Honolulu, Department of Planning and Permitting (808) 768-8098.
- Hawaii Island: County of Hawaii, Department of Public Works (808) 961-8327.
- Maui/Molokai/Lanai County of Maui, Department of Planning (808) 270-7139.
- Kauai: County of Kauai, Department of Public Works (808) 241-4896.

Signed: _____
CARTY S. CHANG, CHIEF ENGINEER

Date: Nov 21, 2023

EXHIBIT 2

JOSH GREEN, M.D.
GOVERNOR | KE KIAʻĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIAʻĀINA

STATE OF HAWAIʻI | KA MOKUʻĀINA ʻO HAWAIʻI
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA ʻOIHANA KUMUWAIWAI ʻĀINA

DIVISION OF FORESTRY AND WILDLIFE
1151 PUNCHBOWL STREET, ROOM 325
HONOLULU, HAWAII 96813

DAWN N.S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
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RYAN K.P. KANAKAʻOLE
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AQUATIC RESOURCES
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CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

February 5, 2024

Log no. 4312

MEMORANDUM

TO: Dean D. Uyeno, Acting Deputy Director
Commission on Water Resource Management

FROM: Lindsey Nietmann
Acting Wildlife Program Manager

SUBJECT: **Request for Comments on the Stream Diversion Works Permit Application (SDWP.6011.6), East Maui Irrigation Co., LLC, Modification of Diversion Nos. 156, 209, 232, 142, 168, 267, 255, 187, 177, 145, 243, 144, 236, and 244, Fix Leaks and Provide Habitat Connectivity, East Kōlea, Ka'aiea, 'O'opuola, Nailiilihaele, Hānawana, Hoolawaliili, Hoolawanui, and West Hoolawanui Streams, Maui**

The Department of Land and Natural Resources, Division of Forestry and Wildlife (DOFAW) has received your request for comments on the Stream Diversion Works Permit application (SDWP.6011.6) for the Modification of Diversion of the East Kōlea, Ka'aiea, 'O'opuola, Nailiilihaele, Hānawana, Hoolawaliili, Hoolawanui, and West Hoolawanui Streams on the island of Maui; TMK(s): (2) 1-1001:042, 50; 2-9-004:004; 2-9-012:029; 2-9-014:001, 004, and 009. The proposed work will modify diversion numbers 156, 209, 232, 142, 168, 267, 255, 187, 177, 145, 243, 144, 236, and 244, to fix leaks and provide habitat connectivity for priority partial restoration as determined by the Commission on Water Resource Management (CWRM) on November 15, 2022. The proposed actions will have positive impacts on stream restoration due to establishing continuous flow through streams. This in turn will have a positive effect on traditional and customary Native Hawaiian rights downstream of the diversions.

DOFAW provides the following comments regarding the potential for the proposed work to affect listed species in the vicinity of the project area.

The State listed ʻōpeʻapeʻa or Hawaiian Hoary Bat (*Lasiurus cinereus semotus*) could potentially occur at or in the vicinity of the project and may roost in nearby trees. Any required site clearing should be timed to avoid disturbance to bats during their birthing and pup rearing season (June 1 through September 15). During this period woody plants greater than 15 feet (4.6 meters) tall should not be disturbed, removed, or

EXHIBIT 3

trimmed. Barbed wire should also be avoided for any construction because bats can become ensnared and killed by such fencing material during flight.
Artificial lighting can adversely impact seabirds that may pass through the area at night by causing them to become disoriented. This disorientation can result in their collision with manmade structures or the grounding of birds. For nighttime work that might be required, DOFAW recommends that all lights used be fully shielded to minimize the attraction of seabirds. Nighttime work that requires outdoor lighting should be avoided during the seabird fledging season, from September 15 through December 15, when young seabirds make their maiden voyage to sea.

If nighttime construction is required during the seabird fledgling season (September 15 to December 15), we recommend that a qualified biologist be present at the project site to monitor and assess the risk of seabirds being attracted or grounded due to the lighting. If seabirds are seen circling around the area, lights should then be turned off. If a downed seabird is detected, please follow DOFAW's recommended response protocol by visiting https://dlnr.hawaii.gov/wildlife/seabird-fallout-season/#response .

Permanent lighting also poses a risk of seabird attraction, and as such should be minimized or eliminated to protect seabird flyways and preserve the night sky. For illustrations and guidance related to seabird-friendly light styles that also protect seabirds and the dark starry skies of Hawai'i please visit https://dlnr.hawaii.gov/wildlife/files/2016/03/DOC439.pdf.

The project work on or at East Kōlea, Ka'aiea, 'O'opuola, Nailiilihaele, Hānawana, Hoolawaliilii, Hoolawanui, and West Hoolawanui Streams could affect endangered native Hawaiian damselflies *(Megalagrion* spp.) that may be present. Based on agency records, five of the fourteen diversions sites have Megalagrion *pacificum* present. These include stream diversions 168 and 267 at Nailiihaele Stream and stream diversions 144, 145, and 244 at Hoolawaliilii Stream. DOFAW therefore recommends measures to avoid take of endangered Hawaiian Damselflies at the diversion sites during the stream restoration project and further consultation with a qualified entomologist. At diversion numbers 156, 177, 187, 209, 236, 243, 255, there are no recent agency surveys of *Megalagrion* spp. DOFAW biologists will perform surveys for the sites within state lands and are available on request from the applicant for any sites that are on private lands. For sites in which listed *Megalagrion* spp. are present, DOFAW biologists will advise on measures to avoid take. Please contact DOFAW Maui entomologist Keahi Bustamente at (808) 268-3247.

DOFAW recommends using native plant species for landscaping that are appropriate for the area; i.e., plants for which climate conditions are suitable for them to thrive, plants that historically occurred there, etc. Please do not plant invasive species. DOFAW also recommends referring to www.plantpono.org for guidance on the selection and evaluation of landscaping plants and to determine the potential invasiveness of plants proposed for use in the project.

DOFAW recommends minimizing the movement of plant or soil material between worksites. Soil and plant material may contain detrimental fungal pathogens (e.g., Rapid ʻŌhiʻa Death), vertebrate and invertebrate pests (e.g., Coqui Frogs, Little Fire Ants, etc.), or invasive plant parts (e.g., Miconia, Mullein, etc.) that could harm our

native species and ecosystems. We recommend consulting the Maui Invasive Species Committee (MISC) at (808) 573-6472 to help plan, design, and construct the project, learn of any high-risk invasive species in the area, and ways to mitigate their spread. All equipment, materials, and personnel should be cleaned of excess soil and debris to minimize the risk of spreading invasive species.

To prevent the spread of Rapid ʻŌhiʻa Death (ROD), DOFAW requests that the information and guidance at the following website be reviewed and followed if ʻōhiʻa trees are present at the project site that will be removed, trimmed, or potentially injured: https://cms.ctahr.hawaii.edu/rod.

The invasive Coconut Rhinoceros Beetle (CRB) or Oryctes rhinoceros is found on the islands of O'ahu, Hawai'i Island, Maui and Kaua'i. On July 1, 2022, the Hawai'i Department of Agriculture (HDOA) approved Plant Quarantine Interim Rule 22-1. This rule restricts the movement of CRB-host material within or to and from the island of O'ahu, which is defined as the Quarantine Area. Regulated material (host material or host plants) is considered a risk for potential CRB infestation. Host material for the beetle specifically includes a) entire dead trees, b) mulch, compost, trimmings, fruit and vegetative scraps, and c) decaying stumps. CRB host plants include the live palm plants in the following genera: Washingtonia, Livistona, and Pritchardia (all commonly known as fan palms), Cocos (coconut palms), Phoenix (date palms), and Roystonea (royal palms). When such material or these specific plants are moved there is a risk of spreading CRB because they may contain CRB in any life stage. For more information regarding CRB, please visit https://dlnr.hawaii.gov/hisc/info/invasive-species-profiles/coconut-rhinoceros-beetle/.

We recommend that Best Management Practices are employed during and after construction to contain any soils and sediment with the purpose of preventing damage to near-shore waters and marine ecosystems.

We appreciate your efforts to work with our office for the conservation of our native species. These comments are general guidelines and should not be considered comprehensive for this site or project. It is the responsibility of the applicant to do their own due diligence to avoid any negative environmental impacts. Should the scope of the project change significantly, or should it become apparent that threatened or endangered species may be impacted, please contact our staff as soon as possible. If you have any questions, please contact Kate Cullison, Protected Species Habitat Conservation Planning Coordinator, at (808) 223-0459 or via email at katherine.cullison@hawaii.gov.

Sincerely,

Lindsey Nietmann
Lindsey Nietmann
Acting Wildlife Program Manager

From: Koskelo, Vera B CIV USARMY CEPOH (USA)
To: Alakai, Rebecca R
Subject: [EXTERNAL] USACE comments on SCAP Application 6011.6
Date: Wednesday, March 20, 2024 10:06:19 AM

Good morning Rebecca,

Thank you for reaching out to our office for comment on the SCAP Applications: 6002.2, 6039.2, 6001.2, and 6011.6. From our phone call this morning, I understand that only 6011.6 is still active and able to receive comments. Thank you for your patience with our response.

Our understanding is that the proposed projects in the SCAP applications are for activities to maintain existing irrigation ditches that flow to ongoing agriculture. Discharges of fill for maintenance of existing irrigation ditches are exempt from regulation under Section 404 of the CWA (323.4.a.(3)); therefore, no permit from the Corps of Engineers is required for the activities described in the four SCAP applications, including 6011.6.

STANDARD STREAM DIVERSION WORKS PERMIT CONDITIONS
(Revised December 15, 2020)

1. The permit application and staff submittal approved by the Commission at its meeting on the above date shall be incorporated herein by reference.
2. The project may require other agency approvals regarding wetlands, water quality, grading, stockpiling, endangered species, and floodways. The permittee shall comply with all other applicable statutes, ordinances, and regulations of the Federal, State and county governments, including, but not limited to, instream flow standards.
3. The permittee, his successors, assigns, officers, employees, contractors, agents, and representatives, shall indemnify, defend, and hold the State of Hawaii harmless from and against any claim or demand for loss, liability, or damage including claims for property damage, personal injury, or death arising out of any act or omission of the permittee or his successors, assigns, officers, employees, contractors, and agents under this permit or related to the granting of this permit.
4. The permittee shall notify the Commission, by letter, of the actual dates of project initiation and completion. The permittee shall submit a set of as-built plans and photos in pdf format of the completed work to the Commission upon completion of this project. This permit may be revoked if work is not started within six (6) months after the date of approval or if work is suspended or abandoned for six (6) months, unless otherwise specified. The proposed work under this stream channel alteration permit shall be completed within two (2) years from the date of permit approval, unless otherwise specified. The permit may be extended by the Commission upon showing of good cause and good-faith performance. A request to extend the permit shall be submitted to the Commission no later than three (3) months prior to the date the permit expires. If the commencement or completion date is not met, the Commission may revoke the permit after giving the permittee notice of the proposed action and an opportunity to be heard.
5. Before proceeding with any work authorized by the Commission, the permittee shall submit one set of construction plans and specifications in PDF format to determine consistency with the conditions of the permit and the declarations set forth in the permit application.
6. The permittee shall implement site-specific, construction Best Management Practices in consultation with the DOH Clean Water Branch and other agencies as applicable, that are designed, implemented, operated, and maintained by the permittee and its contractor to properly isolate and confine activities and to contain and prevent any potential pollutant(s) discharges from adversely impacting State waters per HRS Ch. 342D Water Pollution; HAR §11-54-1 through §11-54-8 Water Quality Standards; and HAR Ch. 11-55 Water Pollution Control, Appendix C.
7. The permittee shall protect and preserve the natural character of the stream bank and stream bed to the greatest extent possible. The permittee shall plant or cover lands denuded of vegetation as quickly as possible to prevent erosion and use native plant species common to riparian environments to improve the habitat quality of the stream environment.
8. The permittee, owner and/or operator of the stream diversion works shall provide and maintain an approved meter or other appropriate device or means for measuring and reporting total water usage on a monthly (calendar or work schedule) basis to the Commission per HAR §13-168-7 Report of Water Use.
9. In the event that subsurface cultural remains such as artifacts, burials or deposits of shells or charcoal are encountered during excavation work, the permittee shall stop work in the area of the find and contact the Department's Historic Preservation Division immediately. Work may commence only after written concurrence by the State Historic Preservation Division.

EXHIBIT 5

LEGAL AUTHORITIES

Water as a Public Trust. The four public trust purposes are:

1. Maintenance of waters in their natural state.
2. Domestic water use of the general public, particularly drinking water.
3. The exercise of Native Hawaiian and traditional and customary rights, including appurtenant rights. Waiahole, 94 Hawaii 97; 9 P.3d 409 (2000).
4. Reservations of water for use on Hawaiian home lands. Waiola O Molokai, Inc., 103 Hawaii 401; 83 P.3d 664 (2004).

Activities on undeveloped lands. Public Access Shoreline Hawaii v. Hawaii County Planning Commission (PASH I). 79 Hawaii 246 (1993).

HRS §174C-71 Protection of instream uses. The commission shall establish and administer a statewide instream use protection program. In carrying out this part, the commission shall cooperate with the United States government or any of its agencies, other state agencies, and the county governments and any of their agencies. In the performance of its duties the commission shall:

(2) Establish interim instream flow standards;
  (D) In considering a petition to adopt an interim instream flow standard, the commission shall weigh 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;
(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;
  (C) The commission shall establish guidelines for processing and considering applications for stream channel alterations consistent with section 174C-93;

HRS §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.

HAR §13-168-2 Definitions.

"Instream flow standard" means a quantity or flow of water or depth of water which is required to be present at a specific location in a stream system at certain specified times of the year to protect aquatic life, wildlife, recreational, aesthetic, scenic, and other beneficial instream uses.

"Instream use" means beneficial uses of stream water for significant purposes which are located in the stream and which are achieved by leaving the water in the stream. Instream uses include, but are not limited to:

(1) Maintenance of aquatic life and wildlife habitats;

(2) Outdoor recreational activities;
(3) Maintenance of ecosystems such as estuaries, wetlands, and stream vegetation;
(4) Aesthetic values such as waterfalls and scenic waterways;
(5) Navigation;
(6) Instream hydropower generation;
(7) Maintenance of water quality;
(8) The conveyance of irrigation and domestic water supplies to downstream points of diversion; and
(9) The protection of traditional and customary Hawaiian rights.

"Stream diversion" means the act of diverting, pumping or otherwise removing water from a stream into a channel, ditch, pipeline, or other conduit.

"Stream diversion works" means any artificial structure, excavation, pipeline, or other conduit constructed singly or in combination, for the purpose of diverting or otherwise removing water from a stream into a channel, ditch, tunnel, pipeline, etc.

HAR §13-168-7 Report of water use. (a) The owner or operator of any well or stream diversion works from which water is being used shall provide and maintain an approved meter or other appropriate device or means for measuring and reporting total water usage on a monthly (calendar or work schedule) basis.

HAR §13-168-32 Stream diversion permits. (a) No person shall construct or alter a stream diversion works, other than in the course of normal maintenance, without first obtaining a stream diversion permit from the commission…

(b) Each application for a stream diversion permit shall be made on forms provided by the commission and 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 works;
(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 works; and
(9) Such other information as the commission may require.

(c) The commission may issue or cause to be issued a stream diversion permit if the proposed construction complies with all applicable laws, rules, and standards. The commission shall approve or disapprove an acceptably completed application within ninety calendar days of receipt by the commission. The commission may approve in whole, approve in part, approve with modifications, or disapprove an application for a stream diversion permit.

(d) In reviewing an application for a permit, the commission shall cooperate with persons having direct interest in the stream diversion works and be guided by the following general considerations:

(1) The quantity and quality of the stream water or the stream ecology shall not be adversely affected.
(2) Where instream flow standards or interim instream flow standards have been established pursuant to chapter 13-169, no permit should be granted for any diversion works which diminishes the quantity or quality of stream water below the minimum established to support identified instream uses, as expressed in the standards.
(3) The proposed diversion works shall not interfere substantially and materially with existing instream or non-instream uses or with diversion works previously permitted.

HAR §13-169-44 Interim instream flow standard for East Maui. The Interim Instream Flow Standard for all streams on East Maui, as adopted by the commission on water resource management on June 15, 1988, shall be that amount of water flowing in each stream on the effective date of this standard, and as that flow may naturally vary throughout the year and from year to year without further amounts of water being diverted offstream through new of expanded diversions, and under the stream conditions existing on the effective date of the standard.