

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

In the Matter of a Contested Case Regarding ) DLNR File No. CCH-LD-21-01  
the Continuation of Revocable Permits (RPs) )  
for Tax Map Key Nos. (2) 1-1-001:044 & 050; ) **MINUTE ORDER NO. 25**  
(2) 2-9-014:001, 005, 011, 012 & 017; (2) 1-1- ) ORDER DENYING SIERRA CLUB'S  
002:002 (por.) and (2) 1-2-004:005 & 007 for ) MOTION FOR THE PREPARATION OF  
Water Use on the Island of Maui to Alexander ) THE HEARING TRANSCRIPT, AND  
& Baldwin, Inc. (A&B) and East Maui ) GRANTING THE MOTION TO REOPEN  
Irrigation Company, LLC (EMI) for the ) THE CONTESTED CASE HEARING TO  
remainder of the 2021 RPs, if applicable, and ) RECEIVE TWO QUARTERLY REPORTS  
for their continuation through the end of 2022 )  
 ) EXHIBITS X-25 AND X-26  
 )  
 ) CERTIFICATE OF SERVICE  
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LAND DIVISION

2022 MAY 13 PM 5:22

OFFICE OF LAND AND NATURAL RESOURCES  
STATE OF HAWAII

**MINUTE ORDER NO. 25**

**ORDER DENYING SIERRA CLUB'S MOTION FOR THE PREPARATION OF THE HEARING TRANSCRIPT, AND GRANTING THE MOTION TO REOPEN THE CONTESTED CASE HEARING TO RECEIVE TWO QUARTERLY REPORTS**

On April 28, 2022, the Sierra Club filed the Sierra Club's Motion for the Preparation of the Hearing Transcript ("Transcript Motion"), and on May 3, 2022, the Sierra Club filed the Sierra Club's Motion to Reopen the Contested Case Hearing to Receive Two Quarterly Reports ("Motion to Reopen"). No responses were filed regarding the Transcript Motion. On May 9, 2022, Alexander & Baldwin, Inc. and East Maui Irrigation Company, LLC ("A&B/EMI") filed their "Position Statement" on the Reopen Motion, in which A&B/EMI did not oppose the reopening of evidence for the limited purpose cited in the Reopen Motion. Both motions were considered by the Board of Land and Natural Resources on May 13, 2022.

In its Transcript Motion, the Sierra Club argues that section 13-1-41(b) of the Hawaii Administrative Rules ("HAR") requires the preparation of a transcript at this stage. The Board disagrees. The cited rule merely identifies materials that, if in existence, should be made part of the record of a contested case hearing. In addition to listing "transcript of the hearing," the rule

also lists things like “stipulations,” “objections to the conduct of the hearing,” and “all other matters placed into evidence.” Not every contested case hearing will include stipulations or objections; they cannot be said to be “required” under this rule. Likewise, not every hearing will include an official transcript; and an official transcript cannot be said to be “required” under this rule. Additionally, the Proposed Findings of Fact, Conclusions of Law, and Decision & Order (FOF/COL) was prepared without reference to the type of hearing transcript being advocated in the Transcript Motion. The audio recording files and electronically generated transcripts have been made a part of the record in these proceedings. The Sierra Club fails to allege (or show) that it is prejudiced by the lack of an official transcript in the hearing record, which already includes the audio recordings and electronically generated transcriptions. By unanimous vote of the Board members, the Transcript Motion is DENIED.

In the Motion to Reopen, the Sierra Club identifies two specific pieces of evidence they wish to add to the official evidentiary record of these contested case proceedings—A&B/EMI’s two most recent “Quarterly Reports,” each of which post-date the evidentiary portion of the proceedings. Because other “Quarterly Reports” were already in the record and because no party objected to reopening the hearing for the limited purpose of including the identified Quarterly Reports, the Motion to Reopen is GRANTED.

The additional exhibits will be added to the case website (available at <https://dlnr.hawaii.gov/ld/contested-case-materials-for-dlnr-file-no-cch-ld-01/>), and shall be identified hereinafter as “**Exhibit X-25**” (December 2021 Report) and “**Exhibit X-26**” (April 2022 Report).

In order to allow the parties to incorporate the identified Quarterly Reports into any exceptions that may be filed and to prevent further delay, the Board will extend the submission

of exceptions to the Hearing Officer's Proposed FOF/COL from close of business on Friday, May 13, 2022 to close of business on Monday, May 16, 2022. Written responses to any Exceptions filed shall be due by close of business (4:30 p.m.) on Wednesday, May 18, 2022. Oral arguments will remain scheduled for Monday, May 23, 2022, unless or until further order of the Board.

SO ORDERED this 13 day of May, 2022.

*Suzanne D. Case*

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Suzanne D. Case  
Presiding Officer

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies a true and accurate copy of the foregoing was duly served upon the following parties by electronic mail, on April 27, 2022.

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DATED: May 13, 2022, Honolulu, Hawai'i.



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Custodians of Record, Land Division  
Department of Land and Natural Resources

# **EXHIBIT X-25**

(December 2021 Report)

# EAST MAUI IRRIGATION COMPANY, LLC

P.O. BOX 791628, PAIA, MAUI, HAWAII 96779-1628 • (808) 579-9516

January 31, 2022

The Honorable Suzanne Case, Chair  
and Members of the Board of Land and Natural Resources  
State of Hawaii  
P.O. Box 621  
Honolulu, Hawaii 96809

RE: Holdover of Revocable Permits Nos. S-7263, S-7264, and S-7265 issued to Alexander & Baldwin, Inc. ("A&B") and Revocable Permit No. S-7266 issued to East Maui Irrigation Company, Limited ("EMI") for Water Use on the Island of Maui: Q3 2021 Status Report

Dear Chair Case:

The purpose of this letter is to provide the 4<sup>th</sup> quarter status report on A&B/EMI's compliance with permit conditions imposed by the Board of Land and Natural Resources ("**BLNR**") as part of its November 13, 2020 approval of the holdover of Revocable Permits Nos. S-7263, S-7264, and S-7265 issued to A&B and Revocable Permit No. S-7266 issued to EMI for the calendar year 2021. We are providing this status report at this time in compliance with the conditions of the permits requiring quarterly written reports to the BLNR.

The attached document lists each of the permit conditions and corresponding compliance actions undertaken as of December 31, 2021. As you know, the agenda, minutes, and staff recommendation for the BLNR's November 13, 2020 meeting relating to the subject permits are the source of the permit conditions listed on the attached.

Since the last report that was submitted, water collection enabled by these East Maui revocable permits continued to serve the needs of the public water systems that serve Upcountry Maui and Nahiku, both owned and operated by the County of Maui Department of Water Supply, as well as the County's Kula Ag Park and increasing diversified agricultural activities in Central Maui undertaken by Mahi Pono. Maintaining these Central Maui lands in agriculture is consistent with the state's constitutional mandate to protect important agricultural lands, as well as the Hawaii State Plan, Maui Countywide Policy Plan, Maui Island Plan, and Maui community plans. These uses of East Maui stream water are further recognized and confirmed by the June 20, 2018, Interim Instream Flow Standard ("**IIFS**") decision issued by the Commission on Water Resource Management ("**CWRM**") for East Maui streams, 24 of which are within the area covered by the East Maui R.P.'s. The diversion and use of East Maui stream water this year has been in compliance with the CWRM's June 2018 IIFS decision.

**EXHIBIT X-25**

The Honorable Suzanne Case  
January 31, 2022  
Page 2

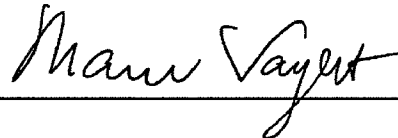
Additionally, with COVID numbers particularly high during Q4 2021, it remained challenging to conduct in-person meetings throughout the quarter. The Q4 MP/A&B East Maui Revocable Permit Committee meeting was again held via video conference on January 26, 2022. Updates relating to the IIFS, EIS, and Mahi Pono's farming operations were provided to the Committee. The 2022 Q1 meeting is scheduled for April 13, 2022.

Please do not hesitate to contact us should you have any questions on the attached permit compliance status report.

Sincerely,

A handwritten signature in black ink, appearing to read "Meredith J. Ching", written over a horizontal line.

Meredith J. Ching, A&B

A handwritten signature in black ink, appearing to read "Mark Vaught", written over a horizontal line.

Mark Vaught, EMI

cc: Ian Horikawa, DLNR Land Division (via email)

# EAST MAUI IRRIGATION COMPANY, LLC

P.O. BOX 791628, PAIA, MAUI, HAWAII 96779-1628 • (808) 579-9516

## BLNR CONDITIONS FOR HOLDOVER OF EAST MAUI WATER PERMITS STATUS OF COMPLIANCE AS OF DECEMBER 31, 2021

### CONDITIONS PER 11/9/18 STAFF SUBMITTAL

***3. Require the holdover of the revocable permits to incorporate the June 20, 2018 order of the Commission on Water Resource Management (CWRM). There shall be no diversion from the streams listed in the CWRM order, and the timing for stopping the diversions shall be in accordance with the aforesaid CWRM order.***

The need for water from the East Maui streams averaged approximately 14.64 million gallons per day (MGD) during the fourth quarter of 2021. This amount is less than the average diverted in Q3 because we experienced more rainfall, requiring less water to be diverted. This amount continues to be well within the bounds of the 2018 IIFS decision concerning total quantity and the use of specific streams. It is also significantly less than the 45 MGD allocation set by the BLNR at its November 13, 2020, meeting

The water that was diverted in Q4 2021 continued to supply the County of Maui for its Nahiku and Upcountry Maui water systems, the Kula Ag Park, as well as fire suppression needs, historical industrial/non-agricultural use, and agricultural uses in Central Maui, on lands now owned and managed by Mahi Pono.

Mahi Pono continues the expansion of its agricultural operations, which will result in a corresponding increase in the need for water from East Maui. Mahi Pono completed the planting of the additional 3,675 acres of crops identified in previous 2021 quarterly reports. The Permittees – and by extension, Mahi Pono – remain committed to the efficient use of East Maui stream water. Mahi Pono's total amount of water usage, together with that of the County of Maui, will not exceed the limits of the IIFS decision at any point during its expansion.

All of the initial approvals have been sought and received from the CWRM to abandon the diversions on the "taro streams" to fully restore their streamflow. EMI received Department of Health approval of the Best Management Practices Plan for the Category 2 diversions. Preparation and construction work has begun. Also, we are currently working with CWRM staff on a diversion-by-diversion analysis of the "Category 1" diversions requested by the CWRM as part of its deliberations of the abandonment permits for these 15 diversions.

The Permittees have also initiated discussions with CWRM staff on IIFS compliance for the 'non-taro streams.' A draft work plan was submitted to CWRM for 41 diversions on 17 additional streams that are implicated by the 2018 IIFS decision. Before issuing the needed permits to undertake the work, CWRM will need to conduct site visits to each diversion site.



**HOLDOVER OF EAST MAUI WATER PERMITS  
2019 BLNR CONDITIONS: STATUS OF COMPLIANCE  
AS OF DECEMBER 31, 2021  
Page 2 of 13**

In the meantime, the Permittees comply with the IIFS decision regarding instream flow requirements (i.e., by individual streams and the total quantity of flow). This compliance is subject to CWRM staff verification. Connectivity requirements of the IIFS decision are being met to the extent possible without the physical modifications that require governmental reviews and approvals. The draft work plan transmitted by the Permittees to the CWRM does address means of achieving full connectivity compliance for these additional non-taro streams.

In summary, the Permittees' diversion of water under the subject 2021 RPs continues to comply with the CWRM's June 20, 2018, IIFS order concerning flow volumes, by individual streams, compliance with connectivity requirements has been met to the extent legally possible without further governmental review and approvals. Significant progress has been made on pursuing the modifications and abandonment of diversions on the seven 'taro streams,' an established and continued priority for both the permittees and the State.

***4. There shall be no waste of water. All diverted water shall be put to beneficial agricultural use or municipal use.***

Status: See uses outlined in response to #3 above. All diverted water is being put to beneficial agriculture use or municipal use, as the diverted water supplies the County of Maui for its Nahiku and Upcountry Maui water systems, the Kula Ag Park, Central Maui fire suppression needs, municipal users who do not currently have access to the County DWS delivery system, and agricultural uses in Central Maui on lands now owned and managed by Mahi Pono.

***5. Any amount of water diverted under the revocable permits shall be for reasonable and beneficial use and always in compliance with the amended IIFS.***

Status: See responses to #3 and #4 above.

***6. The holdover shall comply with all conditions required by the CWRM's Amended IIFS Decision.***

Status: As mentioned above, total water diverted for use in Upcountry and Central Maui approximated an average of 14.64 MGD this past quarter, which is well within the bounds of the CWRM's 2018 IIFS decision concerning the diversion of specific streams and the total amount of water diverted. Over the course of 2021, the Permittees continued to pursue and make progress on the process of modifying the ditch system/diversions to ensure continued IIFS compliance as water needs increase.

**HOLDOVER OF EAST MAUI WATER PERMITS  
2019 BLNR CONDITIONS: STATUS OF COMPLIANCE  
AS OF DECEMBER 31, 2021  
Page 3 of 13**

***7. Permittee shall provide a specific report on the progress regarding the removal of diversions and fixing of the pipe issues before the end of the holdover period.***

Status: This permit condition was initially imposed in 2018, and we believe it relates to a pipe at Pualoa (aka Puolua) Stream at the Lowrie Ditch. In a previous status report, we reported that the pipe had been extended to provide wetted pathways for the movement of stream biota on Pualoa Stream. At the 2018 BLNR hearing on the subject RP's (for 2019), statements were made that the pipe needs to be extended further to go under the road and that two 4" rusted pipes needed to be removed. Accordingly (and as reported in previous quarterly reports), the two 4" pipes have since been removed from the watershed and a new design intended to improve fish migration has been incorporated in the diversion modification plan for compliance with the IIFS and approved by the CWRM in its approval of the Category 3 SWUP's. This specific scope of work was part of the overall work plan referenced earlier. Road maintenance and repair activities continue in order to better facilitate access to several of the more remote intakes that are subject to Category 2 permits. We continue to work with CWRM to finalize a modification plan (as requested by CWRM) to the Category 1 closures that restore the streams to as natural a condition as possible.

***8. Permittee shall clean up trash from revocable permit areas starting with areas that are accessible and close to streams.***

Status: The Permittees have established several standard operating procedures to address the cleanup of trash and debris in the license areas. Besides recognizing unnecessary debris in the field during routine maintenance tasks, EMI has conducted specific identification and removal operations of debris that has been observed from previous fieldwork. In the 4th quarter of 2021, EMI continued to be vigilant about monitoring and removing unused material. EMI will also continue removing any equipment and excess materials it brings into the license area to perform work on the ditch system as soon as the job(s) is completed, which includes diversion modifications required to meet the 2018 IIFS.

**BLNR ADDITIONAL CONDITIONS (11/9/18 BLNR Meeting):**

- 1. The Board established an interim committee to discuss water usage issues in the license area. The committee shall consist of five members, representing Alexander & Baldwin, Farm Bureau, OHA, Native Hawaiian Legal Corporation and the County of Maui. The interim committee shall meet once a month for the first quarter, then at least quarterly thereafter, more often as useful***

Status: With COVID-19 numbers remaining particularly high, a fourth-quarter Committee meeting was held through video conference on January 26, 2022. The meeting was well attended by the following:

**HOLDOVER OF EAST MAUI WATER PERMITS  
2019 BLNR CONDITIONS: STATUS OF COMPLIANCE  
AS OF DECEMBER 31, 2021  
Page 4 of 13**

- Ashley Obrey – Legal Practice Administrator/Staff Attorney, Native Hawaiian Legal Corporation
- Jeff Pearson, Director, Maui County Department of Water Supply
- Mark Vaught – Director, East Maui Irrigation
- Jayson Watts – Director of External Affairs & Strategic Initiatives, Mahi Pono LLC

EMI provided an update on the work related to the IIFS and EIS, and Mahi Pono supplied an update on ongoing farming operations. Updates continue to be well-received by attendees. The committee's next meeting is tentatively set for April 13, 2022.

**CONDITIONS PER 10/11/19 STAFF SUBMITTAL**

**1. Permittees shall provide quarterly written reports to the Board containing the following information:**

- a. The amount of water used on a monthly basis, including the monthly amount of water delivered for: the County of Maui DWS and the County of Maui Kula Agricultural Park; diversified agriculture; industrial and non-agricultural uses, and reservoir/fire protection/hydroelectric uses. Also provide an estimate of the system loss for the EMI ditch system and the A&B field system. Diversified agricultural uses shall also provide information as to location, crop, and user of water. Industrial and non-agricultural uses shall specify the character and purpose of water use and the user of water.

Status: The amount of water used on a monthly basis, including the monthly amount of water delivered for the County of Maui DWS and Kula Ag Park, diversified agriculture, industrial and non-agricultural uses, and reservoir/fire protection/hydroelectric uses can be found in the table attached as Exhibit A. The existence of and continued use of reservoirs is extremely important for fire safety reasons. They are a major source of water for fighting fires on Maui, which occur during the dry months of the year. The location, crop, and users of agricultural water, and the specifics on industrial and non-agricultural uses can be found in the table attached as Exhibit B.

- b. For each stream that is subject to the CWRM order, a status update as to the degree to which the flow of each stream has been restored, and which artificial structures have been removed as required by CWRM.

Status: EMI prioritizes its compliance with the CWRM order and has been working with CWRM staff on implementation plans and permitting. EMI

**HOLDOVER OF EAST MAUI WATER PERMITS  
2019 BLNR CONDITIONS: STATUS OF COMPLIANCE  
AS OF DECEMBER 31, 2021  
Page 5 of 13**

notes that the language of the CWRM order relating to the removal of artificial structures is spelled out on page 269 of the D&O, items i, j, and k which State in part that "*it is intended that diversion structures only need to be modified to the degree necessary to accomplish the amended IIFS and to allow for passage of stream biota, if needed.*" and "The intent of the Commission is to allow for the continued use and viability of the EMI ditch system and will not require the complete removal of diversions unless necessary to achieve the IIFS. A status update is provided in the table attached as Exhibit C. Also included in Exhibit C is a copy of the section of the CWRM order relating to the removal of artificial structures.

- c. *Update on removal of trash, unused man-made structures, equipment and debris that serve no useful purpose, including documenting any reports of such items received from the Department, other public or private entities, and members of the general public and action taken by Permittee to remove the reported items.*

Status: See above response to #8 of Conditions per 11/9/18 Staff Submittal.

- d. *The method and timeline for discontinuing the diversion of water from Waipi'o and Haneho'i streams into Ho'olawa stream, including status updates on implementation.*

Status: As the stream levels fluctuate during inclement weather, EMI personnel are dispatched to manually control the intake gates to prevent excess stream water inflow to the ditch. As for Haneho'i, all intakes have been sealed (per the 2018 D&O); therefore, no water enters the ditch from this stream. Regarding the Waipi'o stream, EMI personnel manually control the intakes on the ditch to prevent excess flow from entering the ditch. Thus, all flows to the ditch are delivered to and used by Mahi Pono and the County of Maui. The flows are no longer controlled into Hoolawa stream.

- 2. *The permittee may not divert an amount of water per month exceeding an average of 45mgd, further subject to all water diverted shall be for reasonable and beneficial uses.***

Status: The 4th quarter's need for water from the East Maui streams has averaged approximately 14.64 million gallons per day (MGD). Only that amount of water is being diverted from the East Maui watershed. This amount complies with the limit of an average of 45 MGD set by the BLNR and continues to be well within the bounds of the 2018 IIFS decision concerning total quantity and the use of specific streams. This water is being used

**HOLDOVER OF EAST MAUI WATER PERMITS  
2019 BLNR CONDITIONS: STATUS OF COMPLIANCE  
AS OF DECEMBER 31, 2021  
Page 6 of 13**

to supply the County of Maui for its Nahiku and Upcountry Maui water systems, the Kula Ag Park, fire suppression needs, historical industrial/non-agricultural use, and agricultural uses in Central Maui, on lands now owned and managed by Mahi Pono.

- 3. For RP S-7266, the area identified as the Hanawi Natural Area Reserve shall be removed from the revocable permit premises. Additionally, A&B/EMI shall continue discussions with DOFAW to identify additional forest reserve lands to be removed from the license areas to be implemented in connection with the issuance of a water lease, if any, or sooner.***

Status: Representatives from EMI and DOFAW met twice in 2020 to continue discussions about general logistics and the potential removal of forest reserve acreages from the proposed license area. These initial meetings included an exchange of information related to access routes and a discussion regarding potential impacts on EMI's operations due to a reduction in the license area. The second of these two meetings discussed and focused on specific access routes in greater detail.

**AMENDMENTS PER MINUTES OF 10/11/19 BLNR MEETING:**

- 1. Mahi Pono is to advise any third-party lessee's, that any decisions they make is based on availability of water on a month-to-month basis renewed annually unless there is a permanent lease***

Status: All third-party lessees have been informed through existing language in their lease agreements that the availability of water is subject to change based on various conditions, one of which would be the nature of the water availability from East Maui through an annually renewed revocable permit or an eventual permanent lease.

- 2. the (14) streams outside of the IIFFS (sic) area continue to be cleaned of debris and Applicant is to provide a status report every three months to Staff***

Status: EMI has continued to remove debris and trash from stream areas. These efforts include locations surrounding the streams located outside of the IIFS area.

HOLDOVER OF EAST MAUI WATER PERMITS  
2019 BLNR CONDITIONS: STATUS OF COMPLIANCE  
AS OF DECEMBER 31, 2021  
Page 7 of 13

CONDITIONS PER 11/13/20 STAFF SUBMITTAL

In addition to any pre-existing requirements....:

1. ***Permittee shall cooperate with CWRM and DAR in studies, site inspections and other actions as necessary to address the streams in the license areas not covered by the CWRM order.***

Status: EMI is in contact with CWRM personnel regarding site visits to evaluate diversions that weren't covered by the D&O. CWRM field staff conducts these site visits on a stream-by-stream basis. EMI has contacted DAR, while on a field visit to review the Category 4 intakes, however, no discussion regarding the streams outside the license area has commenced.

2. ***Permittee shall work with CWRM and DOFAW to determine whether there are alternatives to diversion removal that effectively prevent mosquito breeding and can be feasibly implemented. Permittee shall include the status of alternatives in their quarterly reports.***

Status: EMI has worked with CWRM in the context of the earlier discussion with DOFAW regarding diversion structures that can impede free flow of water and create habitat for mosquito breeding. Considerable evaluation and analysis has been conducted by the CWRM and EMI on nine "Category 1" diversions regarding additional work to be done on these diversions to mitigate these issues. CWRM will meet with stakeholders to discuss this mitigation plan and report back to EMI as to the additional diversion modification work to be undertaken.

3. ***If the Board finds that use of water is not reasonable and beneficial and does not comply with the permitted uses, Permittee shall cease such use within a timeframe as determined by the Department.***

Status: EMI remains willing to comply with this requirement and stands ready to assist the Board in any way it can regarding this matter.

4. ***For water used for agricultural crops, Permittees are to estimate how much water is required for each crop per acre per day.***

Status: Water requirements for each crop is highly dependent on several factors, including soil composition, weather, and the maturity of the crop itself. That said, the average water requirements for Mahi Pono's agricultural crops are estimated to be as follows:

- Orchard Crops - 5,089 gallons per acre per day
- Row Crops - 3,392 gallons per acre per day
- Tropical Fruits - 4,999 gallons per acre per day
- Energy Crops - 3,392 gallons per acre per day

**HOLDOVER OF EAST MAUI WATER PERMITS  
2019 BLNR CONDITIONS: STATUS OF COMPLIANCE  
AS OF DECEMBER 31, 2021  
Page 8 of 13**

These estimates are consistent with the estimated water requirements contained in Table 3 of Appendix I (Agricultural and related Economic Impacts) of the EIS.

- 5. *Permittee shall submit to the Department a plan for their proposed upgrades, including an implementation timeline, to the irrigation system intended to address CWRM's concerns no later than June 30, 2021.***

Status: The Mahi Pono Water Efficiency Upgrade Summary was submitted.

- 6. *Permittee shall pay the 2021 monthly rent amounts as determined above.***

Status: EMI has remained current in its payment of rent to the State for the subject revocable permits.

- 7. *"Trash and Debris" shall be further defined as "any loose or dislodged diversion material such as concrete, rebar, steel grating, corrugated metals, railroad ties, etc. that can be removed by hand (or by light equipment that can access the stream as is)."***

Status: EMI understands the term "Trash and Debris" is further defined as noted in the DLNR staff submittal. As mentioned previously, EMI has established several standard operating procedures to address the cleanup of trash and debris in the license areas. Besides recognizing unnecessary debris in the field during routine maintenance tasks, EMI has conducted specific identification and removal operations of debris that has been observed from previous field work. EMI also has a practice of removing any equipment and excess materials it brings into the license area to perform work on the ditch system as soon as the job(s) is completed. These practices continue to apply to the "Trash and Debris" term as more clearly defined by DLNR staff.

- 8. *System losses and evaporation shall not be considered as a waste of water.***

Status: Exhibit A notes system losses and evaporation as water uses.

**AMENDMENTS PER MINUTES OF 11/13/20 BLNR MEETING:**

- 3. *Include a representative of the Huelo Community Association to the interim discussion group first authorized in 2018.***

Status: Ramana Sawyer of Huelo represents the Huelo Community Association as a member of the interim discussion group.

**HOLDOVER OF EAST MAUI WATER PERMITS  
2019 BLNR CONDITIONS: STATUS OF COMPLIANCE  
AS OF DECEMBER 31, 2021  
Page 9 of 13**

- 4. Permittee shall look into supplying the Maui Invasive Species Committee with water, and if feasible, and despite it not being an agricultural use, be considered a reasonable and beneficial and permitted use under the RP.**

Status: EMI/Mahi Pono maintains ongoing discussions with MISC regarding their need for water to conduct invasive species removal. We continue to discuss additional options for this.

- 5. Regarding staff recommendation #5, in reviewing efficiency upgrades to their system, Permittee is to work with the Maui Fire Department to determine what their exact needs are.**

Status: A breakdown of what the Maui Fire Department's requirements are is attached.

**EXHIBIT A – MONTHLY WATER USAGE**

All Figures in Millions of Gallons per Day ("MGD")

Month	East Maui Surface Water @ Honopou	East Maui Surface Water Gained from Area Between Honopou and Maliko	Groundwater Pumped on-Farm	County of Maui DWS <sup>1</sup>	County of Maui Ag Park <sup>2</sup>	Diversified Agriculture <sup>3</sup>	Historic / Industrial Uses <sup>4</sup>	Reservoir / Seepage / Fire Protection / Evaporation / Dust Control / Hydroelectric <sup>5</sup>	
								Diverted Reserve to meet Contractual Obligation to County DWS & Ag Park <sup>6</sup>	Other <sup>7</sup>
October	18.87	0.72	5.81	2.36	0.54	11.26	1.10	4.60	5.54
November	16.41	1.31	6.00	3.93	0.69	10.69	1.10	2.88	4.43
December	8.65	0.00	1.45	0.69	0.30	2.80	1.10	6.51	0
<b>Quarterly Average</b>	<b>14.64</b>	<b>0.68</b>	<b>4.42</b>	<b>2.33</b>	<b>0.51</b>	<b>8.25</b>	<b>1.10</b>	<b>4.66</b>	<b>2.89</b>

1. The numbers in this column are based on reports received from the County of Maui and have not been independently verified by EMI.
2. The numbers in this column are based on reports received from the County of Maui and have not been independently verified by EMI.
3. Diversified Agriculture includes the users/uses described in Exhibit B.
4. Historical/Industrial Uses are non-HC&S uses that have historically relied on water from the EMI Ditch System, even after the closure of HC&S. These include uses by entities located either adjacent to or within the boundaries of the farm and are further described in Exhibit B.



**HOLDOVER OF EAST MAUI WATER PERMITS  
2019 BLNR CONDITIONS: STATUS OF COMPLIANCE  
AS OF DECEMBER 31, 2021  
Page 10 of 13**

5. The numbers in these columns include water not separately accounted for in the columns to the left. The EMI system is operated in a manner that ensures continuous water availability in the reservoirs to meet the County of Maui's needs for fire protection for brush fires, the risk of which has increased due to the reduction of the irrigated acreage following the cessation of sugar cultivation but is decreasing as Mahi Pono continues to implement its farm plan. Seepage and evaporation are also included in this column. The water used by the Mahi Pono hydroelectric system is non-consumptive and is returned to the ditch after being used to generate clean energy. The water is re-used consumptively by one of the other uses, or if there is no reuse, ends up in the reservoirs.
  
6. Operationally and pursuant to a contractual agreement with the County of Maui, a minimum of approximately 6 MGD must be reliably conveyed to / made available to the County each and every day so that the County has flexibility regarding when to run its plant depending on weather conditions, demand, water available from its Piholo plant, etc. Additionally, a minimum of approximately 1.5 MGD must be reliably conveyed to / made available to the County each and every day so that the County can be flexible regarding how to meet the needs of the Ag Park. The numbers in this sub-column reflect the portion of the 7.5 MGD that is made available to the County every day, that the County does not use (i.e., 7.5mgd less the sum of the amounts used by the County DWS at Kamole Weir and Ag Park). Water that is not used by the County remains in the Ditch System and is directed to reservoirs located on the former plantation.
  
7. The numbers in these columns reflect the amount of water not separately accounted for in the columns entitled "County of Maui DWS," "County of Maui Ag Park," "Diversified Agriculture," and "Historic/Industrial Uses" less the reserve needed to meet EMI's contractual obligations to the County of Maui.

**EXHIBIT B – WATER USAGE SPECIFICS**

**Diversified Agriculture Users**

<b>Entity</b>	<b>Crop</b>	<b>Location (TMK)</b>	<b>Field</b>	<b>Acreage</b>
<i>Mahi Pono</i>	Citrus	250030010000, 250030210000, 2500030220000, 250030230000, 250030240000, 250030250000, 2500030250000, 250030260000, 250030270000	300	359
<i>Mahi Pono</i>	Coffee	250030030000	301	273
<i>Mahi Pono</i>	Citrus	250030330000, 250030310000, 250030320000	303	176
<i>Mahi Pono</i>	Citrus	380030040000	501	83
<i>Mahi Pono</i>	Citrus	380030040000	502	290
<i>Mahi Pono</i>	Citrus	380030040000	503	144
<i>Mahi Pono</i>	Citrus	380030040000	504	294
<i>Mahi Pono</i>	Citrus	380030040000	509	79
<i>Mahi Pono</i>	Citrus	380030040000	510	181
<i>Mahi Pono</i>	Citrus	380030040000	511	161
<i>Mahi Pono</i>	Citrus	380030040000	512	132
<i>Mahi Pono</i>	Citrus	380010010000	604	343
<i>Mahi Pono</i>	Citrus	380010010000	605	399

**HOLDOVER OF EAST MAUI WATER PERMITS  
2019 BLNR CONDITIONS: STATUS OF COMPLIANCE  
AS OF DECEMBER 31, 2021  
Page 11 of 13**

<i>Mahi Pono</i>	Citrus	380010010000	606	134
<i>Mahi Pono</i>	Citrus	380040010000	610	40
<i>Mahi Pono</i>	Citrus	380030010000	701	249
<i>Mahi Pono</i>	Citrus	380030010000	702	204
<i>Mahi Pono</i>	Citrus	380030010000	703	110
<i>Mahi Pono</i>	Citrus	380030010000	704	223
<i>Mahi Pono</i>	Citrus	380040010000	803A	129
<i>Mahi Pono</i>	Pongamia	380040010000	803B	32
<i>Mahi Pono</i>	Avocado	380040010000	803C	6
<i>Mahi Pono</i>	Papaya	380030020000	807	22
<i>Mahi Pono</i>	Coffee	380030020000	807	84
<i>Mahi Pono</i>	Citrus	380040010000	809	251
<i>Mahi Pono</i>	Citrus	380040010000	814	340
<i>Maui Best (Tenant)</i>	Sweet Potato	250010010000	408	281
<i>Maui Best (Tenant)</i>	Sweet Potato	250010010000	409	180
<b>TOTAL</b>				<b>5199</b>

**EXHIBIT B – WATER USAGE SPECIFICS (Continued)**

**Historic / Industrial Uses**

Water Users	Source/Delivery Point	Water User's Location	Relationship to EMI / A&B / Mahi Pono	Use
Imua Energy Maui LLC, dba Maul EKO Systems LLC (Tenant of County Central Maui Landfill)	Pumped from Haiku Ditch	3-8-003-019	Gov't Tenant	General Use for Compost Operation
HC&S Mill Area Fire Suppression	702 Cistern	3-8-006-001 CPR #1	A&B - Owned	Fire suppression for ag offices & Puunene Post Office
New Leaf Ranch (Non-Profit)	702 Cistern	3-8-006-029	Tenant	Irrigation water for non-profit providing ag-related work opportunities and training as mental health & substance use dependency treatment
Costo Maddela	Haiku Ditch	3-8-001-001	Tenant	Pasture & Animal Water
Harriet, Michael & Jordan Santos	Kauhikoa Ditch	2-5-001-018 & 019	Tenant	Pasture & Animal Water
Leonard Pagan	Kauhikoa Ditch	2-5-002-001	Tenant	Pasture & Animal Water
Harry Cambra	Kauhikoa Ditch	2-5-003-026,027,036,037,038	Tenant	Pasture & Animal Water

EXHIBIT C – CWRM ORDER STATUS UPDATE

*Section i, j, & k from CWRM D&O*

- i. It is intended that diversion structures only need to be modified to the degree necessary to accomplish the amended IIFS and to allow for passage of stream biota, if needed.
- j. This Order does not require that every diversion on every tributary be removed or modified, the Commission is only looking at modifications to main stem and major diversions to accomplish the amended IIFS set forth above. The Commission also recognizes that it is not the purpose of this proceeding to determine how the diversions will be modified. That issue will be before the Commission in a subsequent process.
- k. The intent of the Commission is to allow for the continued use and viability of the EMI Ditch system and will not require the complete removal of diversions unless necessary to achieve the IIFS.

HOLDOVER OF EAST MAUI WATER PERMITS  
 2019 BLNR CONDITIONS: STATUS OF COMPLIANCE  
 AS OF DECEMBER 31, 2021  
 Page 13 of 13

EXHIBIT C – CWRM ORDER STATUS UPDATE (Continued)

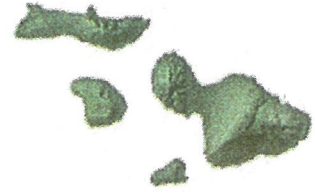
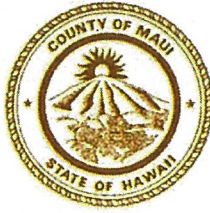
IIFS STREAM UPDATE

Stream Name	Restoration Status	BRQSO at IIFS (cfs)	IIFS Value (cfs)	IIFS Location	Current Status
Makapipi	Full	1.3	n/a	Above Hana Highway	Gate removed, water flowing downstream below intake
Hanawi	Connectivity	4.6	0.92	Below Hana Highway	Gate open, water flowing downstream below intake
Kapala	Connectivity	2.8	0.56	On diversion at Koolau Ditch	Main gate open, water flowing downstream below intake
Waiake	None	0.77	0.77	Above Hana Highway	Gate open, water flowing downstream below intake
Paakea	Connectivity	0.9	0.18	At Hana Highway	Intake gate closed, water flowing downstream over dam
Waiahu	Full	5	n/a	At Hana Highway	Intake gate closed, sluice gate removed. All water flowing downstream.
Puakaa	Connectivity	1.1	0.2	Above Hana Highway	Gate open, water flowing downstream below intake
Koipihua	H90	5	3.2	Below Hana Highway	Main gates open, ditch control gates closed. Water flowing downstream.
East Waialaha	H90	5.8	3.7	At Hana Highway	Gates open, water flowing downstream below intake
West Waialaha	Full	6	n/a	Above Hana Highway	Gates open, water flowing downstream below intake
Waiuanui	Full	6.1	n/a	At Hana Highway	All intakes sealed (Category 1) water flowing downstream below intake
Ohi-a-Maunui	None	4.7	n/a	None	No diversion
Waiokamilo	Full	3.9	n/a	Below diversion at Koolau Ditch	All intakes closed, water flowing downstream
Palanihulu	Full	11	n/a	Above Hana Highway	All water either passing intakes or flowing out of the Kano sluice gate. Water flowing downstream.
Pihua	Full	14	n/a	Above Hana Highway	Intake sealed, water flowing downstream.
Kuakalia	Connectivity	0.28	2.2	To be determined	Intake gate closed, water flowing downstream over dam
Honohanu	H90	4.2	4.2	Above Hana Highway	All 4 diversion sluice gates are open, water flowing downstream
Punahalu/Koia	H90	4.5	2.9	Above Hana Highway	Sluice gate open, water flowing downstream below intake
Hapuaena	Connectivity	4.9	1.36	Below Hana Highway	Intake gate closed, water flowing downstream, dam will require modification
Puuhakama	None	8.4	1.1	Above Hana Highway	Intake gate will be used to ensure water flowing downstream, intake dam will require significant modification
Waihinape	H90	0.9	0.9	Above Hana Highway	No diversion. Water flowing downstream.
Waihanui	H90	6.7	3.8	Above Hana Highway	Center ditch sluice gate open. Water flowing downstream.
Hanalei	Full	2.54	n/a	Upstream of Lower Ditch	Intake sealed. Water flowing downstream.
Hualo (Puhou)	Full	1.47	n/a	Downstream of Hualo Ditch	Lower intake will require significant modifications & corresponding permit approvals / Hualo intake sealed
Honopou	Full	6.5	n/a	Below Hana Highway	Three sluice gates open, one intake sealed. One of two Waialeale intakes sealed, water flowing downstream

MICHAEL P. VICTORINO  
Mayor

DAVID C. THYNE  
Fire Chief

BRADFORD K. VENTURA  
Deputy Fire Chief



**DEPARTMENT OF FIRE & PUBLIC SAFETY**  
COUNTY OF MAUI  
200 DAIRY ROAD  
KAHULUI, HI 96732

June 22, 2021

Mark Vaught  
Mahi Pono  
2200 Main St., Suite 405  
Wailuku, HI 96793

Dear Mr. Vaught,

**SUBJECT: WATER USAGE FOR WILDLAND FIREFIGHTING**

The County of Maui, Department of Fire & Public Safety estimates the hourly usage for our approximate gallons of water per resource as follows:

Helicopter	2400/ hour
Tankers	7000/ hour
Type 1 Engines	1500/ hour
Type 5 Engines	800/ hour
Utility Vehicles	300/ hour

An estimate for the year is not possible due to the unpredictable nature of wildland fire incidents. The frequency and the duration of our fires vary from year to year.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard T. Kawasaki".

RICHARD T. KAWASAKI  
Assistant Chief of Operations

# **EXHIBIT X-26**

(April 2022 Report)

# EAST MAUI IRRIGATION COMPANY, LLC

P.O. BOX 791628, PAIA, MAUI, HAWAII 96779-1628 • (808) 579-9516

April 21, 2022

The Honorable Suzanne Case, Chair  
and Members of the Board of Land and Natural Resources  
State of Hawaii  
P.O. Box 621  
Honolulu, Hawaii 96809

RE: Holdover of Revocable Permits Nos. S-7263, S-7264, and S-7265 issued to Alexander & Baldwin, Inc. ("A&B") and Revocable Permit No. S-7266 issued to East Maui Irrigation Company, Limited ("EMI") for Water Use on the Island of Maui: Q1 2022 Status Report

Dear Chair Case:

The purpose of this letter is to provide the 1st quarter status report on A&B/EMI's compliance with permit conditions imposed by the Board of Land and Natural Resources ("**BLNR**") as part of its November 13, 2020 approval of the holdover of Revocable Permits Nos. S-7263, S-7264, and S-7265 issued to A&B and Revocable Permit No. S-7266 issued to EMI for the calendar year 2021. We are providing this status report for informational purpose and in the spirit of transparency though we recognize that BLNR approval of 2022 revocable permits is still pending. We have assumed for purposes of this report the same permit conditions as were imposed in the BLNR's November 13, 2020 action.

The attached document lists each of the permit conditions and corresponding compliance actions undertaken as of March 31, 2022. As you know, the agenda, minutes, and staff recommendation for the BLNR's November 13, 2020 meeting relating to the subject permits are the source of the assumed permit conditions listed on the attached.

Since the last report that was submitted, water collection enabled by these East Maui revocable permits continued to serve the needs of the public water systems that serve Upcountry Maui and Nahiku, both owned and operated by the County of Maui Department of Water Supply, as well as the County's Kula Ag Park and increasing diversified agricultural activities in Central Maui undertaken by Mahi Pono. Maintaining these Central Maui lands in agriculture is consistent with the state's constitutional mandate to protect important agricultural lands, as well as the Hawaii State Plan, Maui Countywide Policy Plan, Maui Island Plan, and Maui community plans. These uses of East Maui stream water are further recognized and confirmed by the June 20, 2018, Interim Instream Flow Standard ("**IIFS**") decision issued by the Commission on Water Resource Management ("**CWRM**") for East Maui streams, 24 of which are within the area covered by the East Maui R.P.'s. The diversion and use of East Maui stream water this year has been in compliance with the CWRM's June 2018 IIFS decision.

**EXHIBIT X-26**

The Honorable Suzanne Case  
April 21, 2022  
Page 2

Additionally, the Q1 MP/A&B East Maui Revocable Permit Committee meeting was held on April 13, 2022. EMI provided an update on the work related to the IIFS and EIS, and Mahi Pono supplied an update on ongoing farming operations. The next meeting is tentatively scheduled for July 15, 2022.

Please do not hesitate to contact us should you have any questions on the attached permit compliance status report.

Sincerely,



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Meredith J. Ching, A&B



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Mark Vaught, EMI

cc: Ian Horikawa, DLNR Land Division (via email)



# EAST MAUI IRRIGATION COMPANY, LLC

P.O. BOX 791628, PAIA, MAUI, HAWAII 96779-1628 • (808) 579-9516

## BLNR CONDITIONS FOR HOLDOVER OF EAST MAUI WATER PERMITS STATUS OF COMPLIANCE AS OF MARCH 31, 2022

### CONDITIONS PER 11/9/18 STAFF SUBMITTAL

**3. Require the holdover of the revocable permits to incorporate the June 20, 2018 order of the Commission on Water Resource Management (CWRM). There shall be no diversion from the streams listed in the CWRM order, and the timing for stopping the diversions shall be in accordance with the aforesaid CWRM order.**

The need for water from the East Maui streams averaged approximately 12.88 million gallons per day (MGD) during the first quarter of 2022. This amount is less than the average daily water diversion in Q4 2021. This reduced amount is primarily due to lower-than-expected rainfall in the East Maui watershed area, which limited the available amount of water that could be diverted. This amount continues to be well within the bounds of the 2018 IIFS decision concerning total quantity and the use of specific streams. It is also significantly less than the 45 MGD allocation set by the BLNR at its November 13, 2020 meeting and the 25 MGD (averaged monthly) diversion limitation from the East Maui streams (as measured at Honopou Stream) as set forth in the Findings of Fact, Conclusions of Law and Order filed on August 23, 2021 in Civil No. 20-0001541 (*Sierra Club v. Board of Land and Natural Resources, et al.*).

The water that was diverted in Q1 2022 continued to supply the County of Maui for its Upcountry Maui water system, the Kula Ag Park, as well as fire suppression needs, historical industrial/non-agricultural use, and agricultural uses in Central Maui, on lands now owned and managed by Mahi Pono.

Mahi Pono continues the expansion of its agricultural operations, which will result in a corresponding increase in the need for water from East Maui. While Mahi Pono was focused on non-planting field prep activities for the majority of the first quarter, Mahi Pono did complete a total of 38 acres of new plantings in the first quarter of 2022 after meeting the planned 2021 goal of 3,675 acres that was identified in previous 2021 quarterly reports. Mahi Pono's operation will increasingly focus on planting activities during the remaining months of the 2022 calendar year. The Permittees – and by extension, Mahi Pono – remain committed to the efficient use of East Maui stream water. Mahi Pono's total amount of water usage, together with that of the County of Maui, will not exceed the limits of the IIFS decision at any point during its expansion.

All of the initial approvals have been sought and received from the CWRM to abandon the diversions on the "taro streams" to fully restore their streamflow. EMI received Department of Health approval of the Best Management Practices Plan for the Category 2 diversions.

**HOLDOVER OF EAST MAUI WATER PERMITS  
2019 BLNR CONDITIONS: STATUS OF COMPLIANCE  
AS OF MARCH 31, 2022  
Page 2 of 16**

Construction on four of the intakes has been completed, with work on the next seven intakes anticipated to start shortly and take four weeks to complete. Work on these seven intakes was delayed by weather and a landslide that blocked access. Subsequent work on the remaining four "Category 2" intakes will commence immediately following completion of the seven.

The Permittees have also initiated discussions with CWRM staff on IIFS compliance for the 'non-taro streams.' A draft work plan was submitted to CWRM for 41 diversions on 17 additional streams that are implicated by the 2018 IIFS decision. Before issuing the needed permits to undertake the work, CWRM will need to conduct site visits to each diversion site. In the meantime, the Permittees comply with the IIFS decision regarding instream flow requirements (i.e., by individual streams and the total quantity of flow). This compliance is subject to CWRM staff verification. Connectivity requirements of the IIFS decision are being met to the extent possible without the physical modifications that require governmental reviews and approvals. The draft work plan transmitted by the Permittees to the CWRM does address means of achieving full connectivity compliance for these additional non-taro streams.

In summary, the Permittees' diversion of water under the subject 2021 RPs continues to comply with the CWRM's June 20, 2018, IIFS order concerning flow volumes, by individual streams, compliance with connectivity requirements has been met to the extent legally possible without further governmental review and approvals. Significant progress has been made on pursuing the modifications and abandonment of diversions on the seven 'taro streams,' an established and continued priority for both the permittees and the State.

***4. There shall be no waste of water. All diverted water shall be put to beneficial agricultural use or municipal use.***

Status: See uses outlined in response to #3 above. All diverted water is being put to beneficial agriculture use or municipal use, as the diverted water supplies the County of Maui for its Upcountry Maui water systems, the Kula Ag Park, Central Maui fire suppression needs, municipal users who do not currently have access to the County DWS delivery system, and agricultural uses in Central Maui on lands now owned and managed by Mahi Pono.

***5. Any amount of water diverted under the revocable permits shall be for reasonable and beneficial use and always in compliance with the amended IIFS.***

Status: See responses to #3 and #4 above.

**HOLDOVER OF EAST MAUI WATER PERMITS  
2019 BLNR CONDITIONS: STATUS OF COMPLIANCE  
AS OF MARCH 31, 2022  
Page 3 of 16**

***6. The holdover shall comply with all conditions required by the CWRM's Amended IIFS Decision.***

Status: As mentioned above, total water diverted for use in Upcountry and Central Maui approximated an average of 12.88 MGD this past quarter, which is well within the bounds of the CWRM's 2018 IIFS decision concerning the diversion of specific streams and the total amount of water diverted. The permittees continue to operate while making progress on the process of modifying the ditch system/diversions to ensure continued IIFS compliance as water needs increase.

***7. Permittee shall provide a specific report on the progress regarding the removal of diversions and fixing of the pipe issues before the end of the holdover period.***

Status: This permit condition was initially imposed in 2018, and we believe it relates to a pipe at Pualoa (aka Puolua) Stream at the Lowrie Ditch. In a previous status report, we reported that the pipe had been extended to provide wetted pathways for the movement of stream biota on Pualoa Stream. At the 2018 BLNR hearing on the subject RP's (for 2019), statements were made that the pipe needs to be extended further to go under the road and that two 4" rusted pipes needed to be removed. Accordingly (and as reported in previous quarterly reports), the two 4" pipes have since been removed from the watershed and a new design intended to improve fish migration has been incorporated in the diversion modification plan for compliance with the IIFS and approved by the CWRM in its approval of the Category 3 SWUP's. This specific scope of work was part of the overall work plan referenced earlier. Road maintenance and repair activities continue in order to better facilitate access to several of the more remote intakes that are subject to Category 2 permits. We continue to work with CWRM to finalize a modification plan (as requested by CWRM) to the Category 1 closures that restore the streams to as natural a condition as possible.

***8. Permittee shall clean up trash from revocable permit areas starting with areas that are accessible and close to streams.***

Status: The Permittees have established several standard operating procedures to address the cleanup of trash and debris in the license areas. Besides recognizing unnecessary debris in the field during routine maintenance tasks, EMI has conducted specific identification and removal operations of debris that has been observed from previous fieldwork. In the 1<sup>st</sup> quarter of 2022, EMI continued to be vigilant about monitoring and removing unused material. EMI will also continue removing any equipment and excess materials it brings into the license area to perform work on the ditch system as soon as the job(s) is completed, which includes diversion modifications required to meet the 2018 IIFS.

**HOLDOVER OF EAST MAUI WATER PERMITS  
2019 BLNR CONDITIONS: STATUS OF COMPLIANCE  
AS OF MARCH 31, 2022  
Page 4 of 16**

**BLNR ADDITIONAL CONDITIONS (11/9/18 BLNR Meeting):**

- 1. *The Board established an interim committee to discuss water usage issues in the license area. The committee shall consist of five members, representing Alexander & Baldwin, Farm Bureau, OHA, Native Hawaiian Legal Corporation and the County of Maui. The interim committee shall meet once a month for the first quarter, then at least quarterly thereafter, more often as useful***

Status: Starting in 2021, Ramana Sawyer was selected to represent the Huelo Community as requested by the Board. The quarterly meeting for Q1 2022 was held on Wednesday, April 13, 2022. Jayson Watts (Mahi Pono / EMI) sent an invitation out to the group via email and certified mail on April 6, 2022. The meeting was attended by Shayne Agawa (County of Maui DWS), Ramana Sawyer (Huelo Community), and Jayson Watts (Mahi Pono / EMI). Ashley Obrey (NHLC) notified the group via email that she would be unable to attend. OHA did not send a representative to the meeting, and the group did not receive a notice of planned non-attendance.

EMI provided an update on the work related to the IIFS and EIS, and Mahi Pono supplied an update on ongoing farming operations. Updates continue to be well-received by attendees. The committee's next meeting is tentatively set for July 15, 2022.

**CONDITIONS PER 10/11/19 STAFF SUBMITTAL**

- 1. *Permittees shall provide quarterly written reports to the Board containing the following information:***
  - a. *The amount of water used on a monthly basis, including the monthly amount of water delivered for: the County of Maui DWS and the County of Maui Kula Agricultural Park; diversified agriculture; industrial and non-agricultural uses, and reservoir/fire protection/hydroelectric uses. Also provide an estimate of the system loss for the EMI ditch system and the A&B field system. Diversified agricultural uses shall also provide information as to location, crop, and user of water. Industrial and non-agricultural uses shall specify the character and purpose of water use and the user of water.***

Status: The amount of water used on a monthly basis, including the monthly amount of water delivered for the County of Maui DWS and Kula Ag Park, diversified agriculture, industrial and non-agricultural uses, and reservoir/fire protection/hydroelectric uses can be found in the table attached as Exhibit A. The existence of and continued use of reservoirs

**HOLDOVER OF EAST MAUI WATER PERMITS  
2019 BLNR CONDITIONS: STATUS OF COMPLIANCE  
AS OF MARCH 31, 2022  
Page 5 of 16**

is extremely important for fire safety reasons. They are a major source of water for fighting fires on Maui, which occur during the dry months of the year. The location, crop, and users of agricultural water, and the specifics on industrial and non-agricultural uses can be found in the table attached as Exhibit B.

As Mahi Pono prepares new fields for planting, they continue to install new irrigation systems that focus on efficient water application measures. In addition to these new systems, we are also installing weed mat throughout the farm, which help the soil maintain moisture by reducing evaporation. The cumulative water efficiency effects of these initiatives can be seen in the reduced amount of water remaining in the final column of the table attached as Exhibit A.

- b. For each stream that is subject to the CWRM order, a status update as to the degree to which the flow of each stream has been restored, and which artificial structures have been removed as required by CWRM.

Status: EMI prioritizes its compliance with the CWRM order and has been working with CWRM staff on implementation plans and permitting. EMI notes that the language of the CWRM order relating to the removal of artificial structures is spelled out on page 269 of the D&O, items i, j, and k which State in part that "it is intended that diversion structures only need to be modified to the degree necessary to accomplish the amended IIFS and to allow for passage of stream biota, if needed." and "The intent of the Commission is to allow for the continued use and viability of the EMI ditch system and will not require the complete removal of diversions unless necessary to achieve the IIFS. A status update is provided in the table attached as Exhibit C. Also included in Exhibit C is a copy of the section of the CWRM order relating to the removal of artificial structures.

- c. Update on removal of trash, unused man-made structures, equipment and debris that serve no useful purpose, including documenting any reports of such items received from the Department, other public or private entities, and members of the general public and action taken by Permittee to remove the reported items.

Status: See above response to #8 of Conditions per 11/9/18 Staff Submittal.

- d. The method and timeline for discontinuing the diversion of water from Waipi'o and Haneho'i streams into Ho'olawa stream, including status updates on implementation.

**HOLDOVER OF EAST MAUI WATER PERMITS  
2019 BLNR CONDITIONS: STATUS OF COMPLIANCE  
AS OF MARCH 31, 2022  
Page 6 of 16**

Status: As the stream levels fluctuate during inclement weather, EMI personnel are dispatched to manually control the intake gates to prevent excess stream water inflow to the ditch. As for Haneho'i, all intakes have been sealed (per the 2018 D&O); therefore, no water enters the ditch from this stream. Regarding the Waipi'o stream, EMI personnel manually control the intakes on the ditch to prevent excess flow from entering the ditch. Thus, all flows to the ditch are delivered to and used by Mahi Pono and the County of Maui. The flows are no longer controlled into Hoolawa stream.

- 2. The permittee may not divert an amount of water per month exceeding an average of 45mgd, further subject to all water diverted shall be for reasonable and beneficial uses.***

Status: The 1st quarter's need for water from the East Maui streams has averaged approximately 12.88 million gallons per day (MGD). Only that amount of water is being diverted from the East Maui watershed. This amount complies with the limit of an average of 45 MGD set by the BLNR and continues to be well within the bounds of the 2018 IIFS decision concerning total quantity and the use of specific streams. It is also well within the 25 MGD (averaged monthly) diversion limitation from the East Maui streams (as measured at Honopou Stream) as set forth in the Findings of Fact, Conclusions of Law and Order filed on August 23, 2021 in Civil No. 20-0001541 (*Sierra Club v. Board of Land and Natural Resources, et al.*). This water is being used to supply the County of Maui for its Nahiku and Upcountry Maui water systems, the Kula Ag Park, fire suppression needs, historical industrial/non-agricultural use, and agricultural uses in Central Maui, on lands now owned and managed by Mahi Pono.

- 3. For RP S-7266, the area identified as the Hanawi Natural Area Reserve shall be removed from the revocable permit premises. Additionally, A&B/EMI shall continue discussions with DOFAW to identify additional forest reserve lands to be removed from the license areas to be implemented in connection with the issuance of a water lease, if any, or sooner.***

Status: Meetings between EMI and DOFAW have been held, and were focused on identifying those areas that are essential to EMI's ongoing operations, such as access routes and buffer areas around the EMI ditch system to ensure the reliable and safe operation of the system as well as the safety of EMI employees. EMI has expressed to DOFAW a willingness to reduce the license/lease area as long as the permitted area (a) meets the collective needs of DLNR and DOFAW, (b) continues to allow EMI to operate its ditch system in a safe and

**HOLDOVER OF EAST MAUI WATER PERMITS  
2019 BLNR CONDITIONS: STATUS OF COMPLIANCE  
AS OF MARCH 31, 2022  
Page 7 of 16**

efficient manner, and (c) does not affect the access to state water afforded by existing or future RPs and water license/lease(s).

**AMENDMENTS PER MINUTES OF 10/11/19 BLNR MEETING:**

- 1. Mahi Pono is to advise any third-party lessee's, that any decisions they make is based on availability of water on a month-to-month basis renewed annually unless there is a permanent lease***

Status: All third-party lessees have been informed through existing language in their lease agreements that the availability of water is subject to change based on various conditions, one of which would be the nature of the water availability from East Maui through an annually renewed revocable permit or an eventual permanent lease.

- 2. The (14) streams outside of the IFFS (sic) area continue to be cleaned of debris and Applicant is to provide a status report every three months to Staff***

Status: EMI has continued to remove debris and trash from stream areas. These efforts include locations surrounding the streams located outside of the IIFS area.

**HOLDOVER OF EAST MAUI WATER PERMITS  
2019 BLNR CONDITIONS: STATUS OF COMPLIANCE  
AS OF MARCH 31, 2022  
Page 8 of 16**

**CONDITIONS PER 11/13/20 STAFF SUBMITTAL**

In addition to any pre-existing requirements...:

- 1. Permittee shall cooperate with CWRM and DAR in studies, site inspections and other actions as necessary to address the streams in the license areas not covered by the CWRM order.***

Status: EMI is in contact with CWRM personnel regarding site visits to evaluate diversions that weren't covered by the D&O. Such site visits have occurred in Q1 2022, with additional visits already scheduled for Q2 2022. CWRM field staff conducts these site visits on a stream-by-stream basis. EMI has also been in contact with DAR, and has expressed willingness to cooperate with any DAR activities related to the DAR work on streams outside the license area.

- 2. Permittee shall work with CWRM and DOFAW to determine whether there are alternatives to diversion removal that effectively prevent mosquito breeding and can be feasibly implemented. Permittee shall include the status of alternatives in their quarterly reports.***

Status: EMI has worked with CWRM in the context of the earlier discussion with DOFAW regarding diversion structures that can impede free flow of water and create habitat for mosquito breeding. Considerable evaluation and analysis has been conducted by the CWRM and EMI on nine "Category 1" diversions regarding additional work to be done on these diversions to mitigate these issues. CWRM will meet with stakeholders to discuss this mitigation plan and report back to EMI as to the additional diversion modification work to be undertaken.

- 3. If the Board finds that use of water is not reasonable and beneficial and does not comply with the permitted uses, Permittee shall cease such use within a timeframe as determined by the Department.***

Status: EMI remains willing to comply with this requirement and stands ready to assist the Board in any way it can regarding this matter.

- 4. For water used for agricultural crops, Permittees are to estimate how much water is required for each crop per acre per day.***

Status: Water requirements for each crop is highly dependent on several factors, including soil composition, weather, and the maturity of the crop itself. That said, the average water requirement for Mahi Pono's agricultural crops at full maturity are estimated to be as follows:



**HOLDOVER OF EAST MAUI WATER PERMITS  
2019 BLNR CONDITIONS: STATUS OF COMPLIANCE  
AS OF MARCH 31, 2022  
Page 9 of 16**

- Orchard Crops - 5,089 gallons per acre per day
- Row Crops - 3,392 gallons per acre per day
- Tropical Fruits - 4,999 gallons per acre per day
- Energy Crops - 3,392 gallons per acre per day

These estimates are consistent with the estimated water requirements contained in Table 3 of Appendix I (Agricultural and related Economic Impacts) of the EIS.

- 5. *Permittee shall submit to the Department a plan for their proposed upgrades, including an implementation timeline, to the irrigation system intended to address CWRM's concerns no later than June 30, 2021.***

Status: The Mahi Pono Water Efficiency Upgrade Summary was submitted.

- 6. *Permittee shall pay the 2021 monthly rent amounts as determined above.***

Status: EMI has remained current in its payment of rent to the State for the subject revocable permits.

- 7. *"Trash and Debris" shall be further defined as "any loose or dislodged diversion material such as concrete, rebar, steel grating, corrugated metals, railroad ties, etc. that can be removed by hand (or by light equipment that can access the stream as is)."***

Status: EMI understands the term "Trash and Debris" is further defined as noted in the DLNR staff submittal. As mentioned previously, EMI has established several standard operating procedures to address the cleanup of trash and debris in the license areas. Besides recognizing unnecessary debris in the field during routine maintenance tasks, EMI has conducted specific identification and removal operations of debris that has been observed from previous field work. EMI also has a practice of removing any equipment and excess materials it brings into the license area to perform work on the ditch system as soon as the job(s) is completed. These practices continue to apply to the "Trash and Debris" term as more clearly defined by DLNR staff.

- 8. *System losses and evaporation shall not be considered as a waste of water.***

Status: Exhibit A notes system losses and evaporation as water uses.

**AMENDMENTS PER MINUTES OF 11/13/20 BLNR MEETING:**

- 3. *Include a representative of the Huelo Community Association to the interim discussion group first authorized in 2018.***

Status: Ramana Sawyer of Huelo represents the Huelo Community Association as a member of the interim discussion group.

- 4. *Permittee shall look into supplying the Maui Invasive Species Committee with water, and if feasible, and despite it not being an agricultural use, be considered a reasonable and beneficial and permitted use under the RP.***

Status: EMI/Mahi Pono maintains ongoing discussions with MISC regarding their need for water to conduct invasive species removal. We continue to discuss additional options for this.

- 5. *Regarding staff recommendation #5, in reviewing efficiency upgrades to their system, Permittee is to work with the Maui Fire Department to determine what their exact needs are.***

Status: A breakdown of what the Maui Fire Department's requirements are is attached.

**HOLDOVER OF EAST MAUI WATER PERMITS  
2019 BLNR CONDITIONS: STATUS OF COMPLIANCE  
AS OF MARCH 31, 2022  
Page 11 of 16**

**EXHIBIT A – MONTHLY WATER USAGE**  
All Figures in Millions of Gallons per Day ("MGD")

Month	East Maui Surface Water @ Honopou	East Maui Surface Water @ Maliko	East Maui Surface Water Gained from Area Between Honopou and Maliko	Groundwater Pumped on-Farm	County of Maui DWS <sup>1</sup>	County of Maui Ag Park <sup>2</sup>	Diversified Agriculture <sup>3</sup>	Historic / Industrial Uses <sup>4</sup>	Reservoir / Seepage / Fire Protection / Evaporation / Dust Control / Hydroelectric <sup>5</sup>	
									Diverted Reserve to meet Contractual Obligation to County DWS & Ag Park <sup>6</sup>	Other <sup>7</sup>
January	14.14	14.57	0.43	0.52	2.60	0.44	5.11	1.10	4.47	1.38
February	12.31	13.13	0.82	4.82	4.02	0.55	5.93	1.10	2.92	3.41
March	12.20	12.55	0.35	4.38	3.79	0.56	5.97	1.10	3.15	2.35
2022 AVG	12.88	13.41	0.53	3.24	3.47	0.52	5.67	1.10	3.51	2.38

1. The numbers in this column are based on reports received from the County of Maui and have not been independently verified by EMI.
2. The numbers in this column are based on reports received from the County of Maui and have not been independently verified by EMI.
3. Diversified Agriculture includes the users/uses described in Exhibit B.
4. Historical/Industrial Uses are non-HC&S uses that have historically relied on water from the EMI Ditch System, even after the closure of HC&S. These include uses by entities located either adjacent to or within the boundaries of the farm and are further described in Exhibit B. Historically, the use of water by these entities was not regularly metered, and an estimated quantity of 1.1 MGD was developed and previously used as the amount of collective water consumption by these entities. The Q1 2022 report will be the final quarterly report that uses this estimated quantity of water for these uses. Mahi Pono installed meters in March 2022 thus, going forward, the figures reported in this column will reflect actual usage based on those meters.
5. The numbers in these columns include water not separately accounted for in the columns to the left. The EMI system is operated in a manner that ensures continuous water availability in the reservoirs to meet the County of Maui's needs for fire protection for brush fires, the risk of which has increased due to the reduction of the irrigated acreage following the cessation of sugar cultivation but is decreasing as Mahi Pono continues to implement its farm plan. Seepage and evaporation are also included in this column. The water used by the Mahi Pono hydroelectric system is non-consumptive and is returned to the ditch after being used to generate clean energy. The water is re-used consumptively by one of the other uses, or if there is no reuse, ends up in the reservoirs.
6. Operationally and pursuant to a contractual agreement with the County of Maui, a minimum of approximately 6 MGD must be reliably conveyed to / made available to the County each and every day so that the County has flexibility regarding when to run its plant depending on weather conditions, demand, water available from its Piihola plant, etc. Additionally, a minimum of approximately 1.5 MGD must be reliably conveyed to / made available to the County each and every day so that the County can be flexible

**HOLDOVER OF EAST MAUI WATER PERMITS  
2019 BLNR CONDITIONS: STATUS OF COMPLIANCE  
AS OF MARCH 31, 2022  
Page 12 of 16**

regarding how to meet the needs of the Ag Park. The numbers in this sub-column reflect the portion of the 7.5 MGD that is made available to the County every day, that the County does not use (i.e., 7.5mgd less the sum of the amounts used by the County DWS at Kamole Weir and Ag Park). Water that is not used by the County remains in the Ditch System and is directed to reservoirs located on the former plantation.

7. The numbers in these columns reflect the amount of water not separately accounted for in the columns entitled "County of Maui DWS," "County of Maui Ag Park," "Diversified Agriculture," and "Historic/Industrial Uses" less the reserve needed to meet EMI's contractual obligations to the County of Maui.

EXHIBIT B – WATER USAGE SPECIFICS  
 Diversified Agriculture Users

Entity	Crop	Location (TMK)	Field	Acreage
<i>Mahi Pono</i>	Citrus	250030010000, 250030210000, 2500030220000, 250030230000, 250030240000, 250030250000, 2500030250000, 250030260000, 250030270000	300	359
<i>Mahi Pono</i>	Coffee	250030030000	301	273
<i>Mahi Pono</i>	Citrus	250030330000, 250030310000, 250030320000	303	176
<i>Mahi Pono</i>	Citrus	380030040000	501	83
<i>Mahi Pono</i>	Citrus	380030040000	502	290
<i>Mahi Pono</i>	Citrus	380030040000	503	144
<i>Mahi Pono</i>	Citrus	380030040000	504	294
<i>Mahi Pono</i>	Citrus	380030040000	509	79
<i>Mahi Pono</i>	Citrus	380030040000	510	181
<i>Mahi Pono</i>	Citrus	380030040000	511	161
<i>Mahi Pono</i>	Citrus	380030040000	512	132
<i>Mahi Pono</i>	Citrus	380010010000	604	343
<i>Mahi Pono</i>	Citrus	380010010000	605	399
<i>Mahi Pono</i>	Citrus	380010010000	606	134
<i>Mahi Pono</i>	Citrus	380040010000	610	40
<i>Mahi Pono</i>	Citrus	380030010000	701	249
<i>Mahi Pono</i>	Citrus	380030010000	702	204
<i>Mahi Pono</i>	Citrus	380030010000	703	110
<i>Mahi Pono</i>	Citrus	380030010000	704	223
<i>Mahi Pono</i>	Citrus	380040010000	803A	129
<i>Mahi Pono</i>	Pongamia	380040010000	803B	32
<i>Mahi Pono</i>	Avocado	380040010000	803C	6
<i>Mahi Pono</i>	Papaya	380030020000	807	22
<i>Mahi Pono</i>	Coffee	380030020000	807	120
<i>Mahi Pono</i>	Citrus	380040010000	809	251
<i>Mahi Pono</i>	Citrus	380040010000	814	342
<i>Maui Best (Tenant)</i>	Sweet Potato	250010010000	408	281
<i>Maui Best (Tenant)</i>	Sweet Potato	250010010000	409	180
<b>TOTAL</b>				<b>5237</b>

**HOLDOVER OF EAST MAUI WATER PERMITS  
 2019 BLNR CONDITIONS: STATUS OF COMPLIANCE  
 AS OF MARCH 31, 2022  
 Page 14 of 16**

**EXHIBIT B – WATER USAGE SPECIFICS (Continued)  
 Historic / Industrial Uses**

<b>Water Users</b>	<b>Source/Delivery Point</b>	<b>Water User's Location</b>	<b>Relationship to EMI / A&amp;B / Mahi Pono</b>	<b>Use</b>
Imua Energy Maui LLC, dba Maul EKO Systems LLC (Tenant of County Central Maui Landfill)	Pumped from Haiku Ditch	3-8-003-019	Gov't Tenant	General Use for Compost Operation
HC&S Mill Area Fire Suppression	702 Cistern	3-8-006-001 CPR #	A&B - Owned	Fire suppression for ag offices & Puunene Post Office
New Leaf Ranch (Non-Profit)	702 Cistern	3-8-006-029	Tenant	Irrigation water for non-profit providing ag-related work opportunities and training as mental health & substance use dependency treatment
Costo Maddela	Haiku Ditch	3-8-001-001	Tenant	Pasture & Animal Water
Harriet, Michael & Jordan Santos	Kauhikoa Ditch	2-5-001-018 & 019	Tenant	Pasture & Animal Water
Leonard Pagan	Kauhikoa Ditch	2-5-002-001	Tenant	Pasture & Animal Water
Harry Cambra	Kauhikoa Ditch	2-5-003-026,027,036,037,038	Tenant	Pasture & Animal Water

EXHIBIT C – CWRM ORDER STATUS UPDATE  
*Section i, j, & k from CWRM D&O*

- i. It is intended that diversion structures only need to be modified to the degree necessary to accomplish the amended IIFS and to allow for passage of stream biota, if needed.
- j. This Order does not require that every diversion on every tributary be removed or modified, the Commission is only looking at modifications to main stem and major diversions to accomplish the amended IIFS set forth above. The Commission also recognizes that it is not the purpose of this proceeding to determine how the diversions will be modified. That issue will be before the Commission in a subsequent process.
- k. The intent of the Commission is to allow for the continued use and viability of the EMI Ditch system and will not require the complete removal of diversions unless necessary to achieve the IIFS.

**HOLDOVER OF EAST MAUI WATER PERMITS  
2019 BLNR CONDITIONS: STATUS OF COMPLIANCE  
AS OF MARCH 31, 2022  
Page 16 of 16**

**EXHIBIT C – CWRM ORDER STATUS UPDATE (Continued)  
IIFS STREAM UPDATE**

Stream Name	Restoration Status	BPQD at IIFS (cfs)	IIFS Value (cfs)	IIFS Location	Current Status
Makapipi	Full	1.3	n/a	Above Hanalei Highway	Gate removed, water flowing downstream below intake
Hanalei	Connectivity	4.6	0.92	Below Hanalei Highway	Gate open, water flowing downstream below intake
Kapalaia	Connectivity	2.8	0.56	On diversion at Koolau Ditch	Main gate open, water flowing downstream below intake
Waiakala	None	0.77	0.77	Above Hanalei Highway	Gate open, water flowing downstream below intake
Pakaka	Connectivity	0.9	0.18	At Hanalei Highway	Intake gate closed, sluice gate removed. All water flowing downstream.
Waiakohu	Full	5	n/a	At Hanalei Highway	Intake gate closed, sluice gate removed. All water flowing downstream.
Puuwaia	Connectivity	1.1	0.2	Above Hanalei Highway	Gate open, water flowing downstream below intake
Kopiliua	H90	5	3.2	Below Hanalei Highway	Main gate open, ditch control gates closed. Water flowing downstream.
East Waialeale	H90	5.8	3.7	At Hanalei Highway	Gates open, water flowing downstream below intake
West Waialeale	Full	6	n/a	Above Hanalei Highway	Gate open, water flowing downstream below intake
Waialeale	Full	6.1	n/a	At Hanalei Highway	All intakes sealed (Category 1) water flowing downstream below intake
Ohi'a/Mahele	None	4.7	n/a	None	No diversion
Waioakamilo	Full	3.9	n/a	Below diversion at Koolau Ditch	All intakes closed, water flowing downstream
Palaehulu	Full	11	n/a	Above Hanalei Highway	All water either passing intakes or flowing out of the keno sluice gate. Water flowing downstream.
Pihaiu	Full	14	n/a	Above Hanalei Highway	Intake sealed, water flowing downstream.
Nuuanui	Connectivity	0.28	2.2	To Be Determined	Intake gate closed, water flowing downstream over dam
Honomanu	H90	4.2	4.2	Above Hanalei Highway	All 4 diversion sluice gates are open, water flowing downstream
Punahoa/Koia	H90	4.5	2.9	Above Hanalei Highway	Sluice gate open, water flowing downstream below intake
Higupua	Connectivity	4.9	1.36	Below Hanalei Highway	Intake gate closed, water flowing downstream, dam will require modification
Puohoama	Connectivity	8.4	1.1	Below Hanalei Highway	Intake gate will be used to ensure water flowing downstream, Intake dam will require significant modification
Waihanalei	None	0.9	0.9	Above Hanalei Highway	No diversion. Water flowing downstream.
Hanalei	H90	6.7	3.8	Above Hanalei Highway	Center ditch sluice gate open. Water flowing downstream.
Hanalei (Waihanalei)	Full	2.54	n/a	Upstream of Lower Ditch	Intakes sealed. Water flowing downstream.
Hanalei (Waihanalei)	Full	1.47	n/a	Downstream of Hanalei Ditch	Upper intake will require significant modifications & corresponding permit approvals / Hanalei intake sealed
Hanalei (Waihanalei)	Full	6.5	n/a	Below Hanalei Highway	Three sluice gates open, one intake sealed. One of two Waialeale intakes sealed, water flowing downstream